

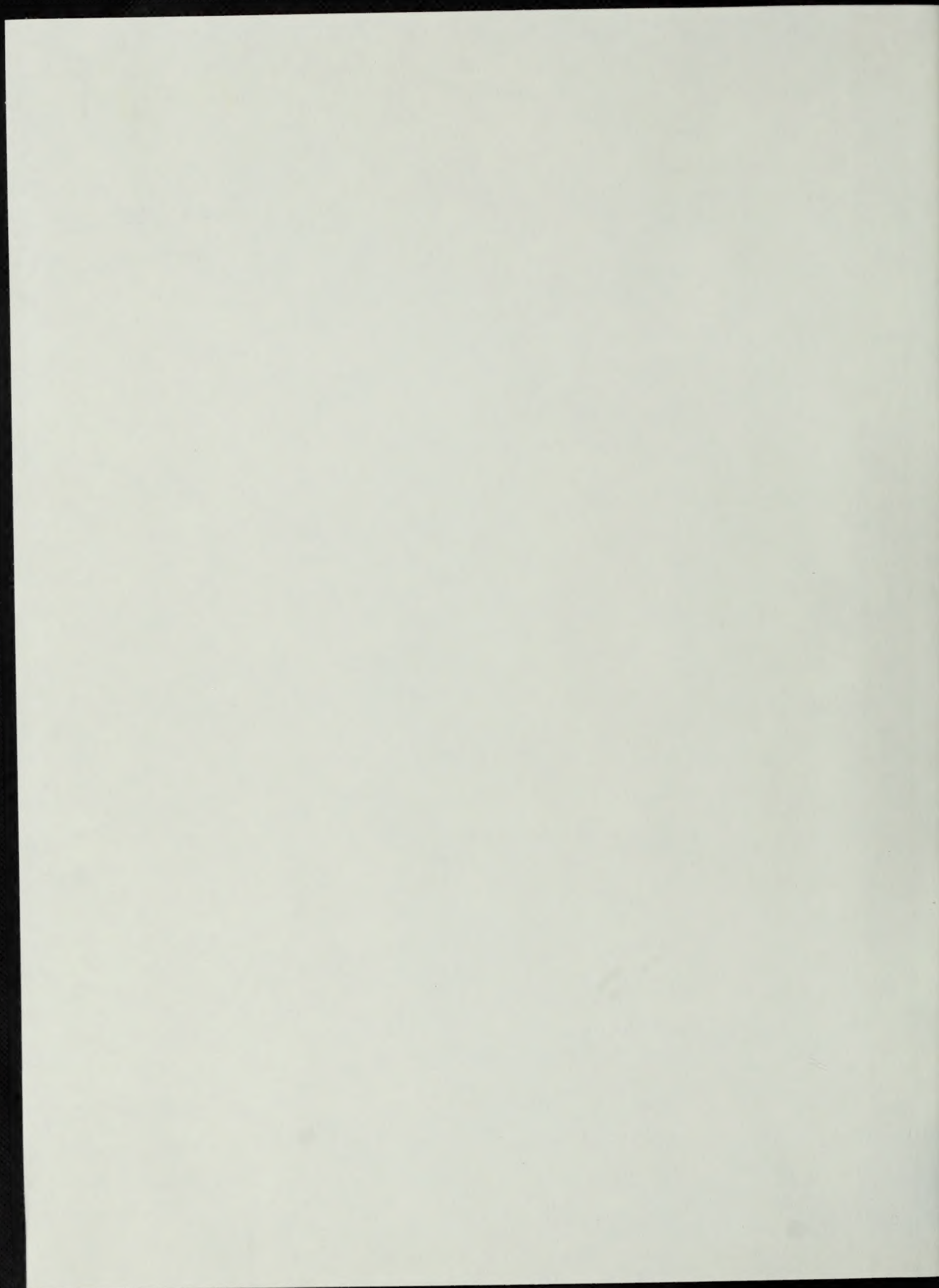
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LA & THE THIRD BRANCH

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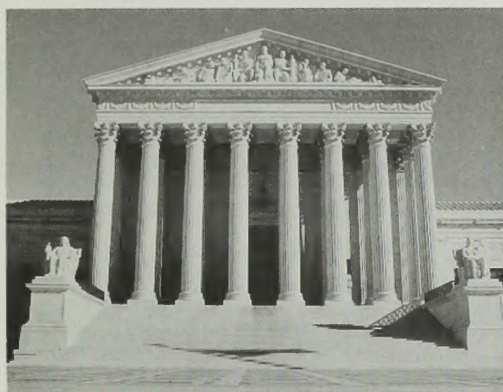
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Chief Justice Rehnquist Reflects on 1994 in Year-end Report

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FEDERAL DEPOSITORY



This is my ninth annual year-end report. As I look back I am aware of recurring themes and trends in my previous reviews. Over the years I have emphasized a number of issues, ranging from the need to allocate resources rationally in the face of fiscal austerity and rising caseloads, to ob-

servations on the delicate relationship among the dispersed powers of the Constitution that in the words of Justice Robert Jackson fosters "separateness but interdependence." This year I want to highlight the relationship between the federal judiciary and Congress, and an example of the

"separateness but interdependence" to which Jackson referred.

Article III of the Constitution vests the judicial power of the United States in the Supreme Court and in such other federal courts as Congress may create. It grants to Article III judges two significant protections of their independence: they have tenure during good behavior, and their compensation may not be

See *Year-end Report* on page 2

INSIDE

Bankruptcy Commission Members Appointed	7
Congressional Committees Take Shape	10
Wardens Advocate Prevention as Crime Deterrent	12

Year-end Report continued from page 1 diminished during their term of office. But federal courts are heavily dependent upon Congress for virtually every other aspect of their being.

To begin with, all federal courts except the Supreme Court are created by Congress. The district courts and the old circuit courts were established by the Judiciary Act of 1789, but the circuit courts of appeals did not come into existence until 1891.

could not have been brought in the federal courts.

The substantive law to be applied in federal courts is determined by Congress. For the first century of our existence under the Constitution, Congress legislated relatively little, but beginning with the Interstate Commerce Act in 1887, Congress began making up for lost time and has continued to enact more and more federal statutes applicable in federal

years it exercised that authority directly, but the Rules Enabling Act enacted sixty years ago delegated that authority to the courts. Amendments to the existing Rules of Procedure today are first recommended by the Rules Committees, and then presented first to the Judicial Conference and then to the Supreme Court. Those which survive this process are laid before Congress, and go into effect unless disapproved. I believe that this system has worked well, and that Congress should not seek to regulate the composition of the Rules Committees any more than it already has.

Finally, the federal judiciary is dependent upon appropriation of money by Congress for all of its day-to-day operations. The payment of salaries of judges and other court personnel, payment of jurors, and countless other kinds of operating expenses are paid with funds appropriated by Congress.

Thus, when we examine the relationship of the federal judiciary to Congress, we see two branches of the federal government which are constitutionally separate, but whose ongoing functioning is steeped in interdependence. It is only natural that judges should want to have a say as to what Congress does with respect to the judiciary. The body established to speak for the federal judiciary on such matters is the Judicial Conference of the United States, over which I preside, consisting of the thirteen chief judges of the courts of appeals and thirteen district judge representatives. In addition to the Judicial Conference, there are circuit councils for each of the circuits, and judicial conferences of each of the circuits usually held once a year. What constraints ought these bodies to observe in taking positions with respect to proposed legislation affecting the judiciary?

Judicial comment and proposals with respect to what might loosely



"The courts and Congress must continue to work together in a spirit of cooperation in dealing with the many matters of common interest which confront them. I am confident that they will continue to do so in 1995, just as they have in the past."

Every individual judgeship in the federal system must be authorized by Congress, and judicial compensation set by that body.

The jurisdiction of the federal courts is established by Congress. Federal question jurisdiction, which today is the basis for so much litigation in the federal courts, was not conferred upon these courts by Congress until 1875. Before that, the staple of the business of the lower federal courts were suits based on diversity of citizenship and admiralty jurisdiction. Most of the important constitutional cases decided by the Supreme Court before 1875—*McCulloch v. Maryland*, *Gibbons v. Ogden*, the *Charles River Bridge* case, the *Slaughterhouse* cases—came to the Supreme Court through the various state court systems, because they

courts. Since the Supreme Court early held that there were no common law crimes which would be recognized in federal courts, every crime prosecuted in those courts is the result of a positive act of Congress. Congress, of course, is subject to the limits imposed by the Constitution in enacting legislation. And in *Hayburn's Case*, decided in the first decade of the Nation's existence, the Supreme Court held that Congress could not require federal courts to decide cases which were then subject to revision by some agency outside the judiciary. But subject to these limitations, the law which Congress declares is the law which the federal courts apply.

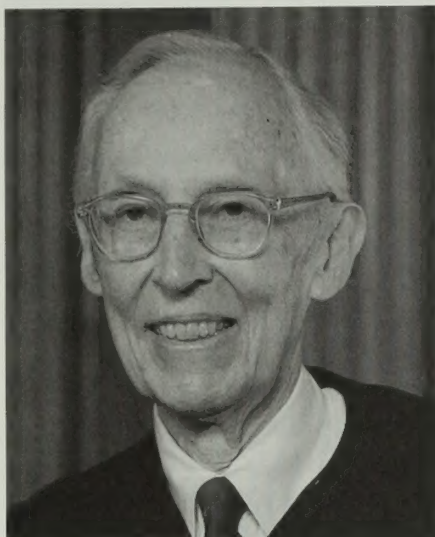
Congress also has authority to regulate the Rules of Procedure to be used in the federal courts. For many

be called "wages, hours, and working conditions" seem obviously appropriate. Judges, being human, have a natural desire to see that their compensation is not eroded by inflation, and that the purchasing power of their salaries therefore keeps abreast of rising prices. They also have a similar interest in not having impossible demands made on them in terms of caseload. The Administrative Office of the United States Courts has for some time collected statistics about increased dockettings in various courts, and the Judicial Conference uses these statistics when submitting their requests to Congress for the creation of additional judgeships.

Insofar as proposed changes in the Federal Rules are concerned, the Judicial Conference by statute has the authority to reject or accept such proposals before they are submitted to Congress. With respect to other largely procedural matters, the Judicial Conference has felt free to make its views known to Congress because of the experience acquired by judges in the administration of established procedures which might not be similarly available to members of Congress. One example is the review of state convictions by federal habeas corpus. The Judicial Conference several years ago approved a modified version of the proposal contained in the Report of the Powell Committee, which concluded that capital cases "should be subject to one fair and complete course of collateral review in the state and federal system."

Federal judges have direct exposure to the operation of the present system, which lends itself to long, drawn out and repetitive federal challenges to final judgments of conviction in the state courts. I have always believed that the Powell report struck a sound balance between the need for insuring careful review in the federal courts of a capital defendant's constitutional claims,

and the need for the state to carry out the sentence expeditiously once the federal courts have determined that its imposition was consistent with the Constitution.



Retired Justice Louis F. Powell, Jr.

In a similar vein, the Judicial Conference advised Congress last summer with respect to the possible judicial consequences which contemplated reforms in health care law might entail. It endorsed four principles which it hoped would guide Congress in this area: (1) there should be full exhaustion of administrative remedies for claims of denied benefits before any court action could be brought; (2) state courts should be the primary forum for review of denied claims; (3) traditional discrimination claims should be separated out; and (4) sufficient resources should be provided to all administrative and judicial offices, both state and federal, to insure the proper implementation of reviews of such claims.

The Judicial Conference has also taken a position opposing some of the mandatory minimum sentences which Congress provided in some recent crime legislation. The basis for this opposition was that the mandatory minimum tended to skew the philosophy behind the Sentencing

Guidelines which Congress also enacted. This was an effect which the judges saw firsthand in their duty to impose sentence, and which might well not be apparent to those engaged in congressional oversight of the statutes involved.

Whether the scheme of federal sentencing should emphasize deterrence as opposed to punishment, what is an appropriate sentence for a particular offense, and similar matters, are questions upon which a judge's view should carry no more weight than the view of any other citizen. In such cases I do not believe that the Judicial Conference, or other judicial organizations, should take an official position. Individual judges have, on occasion, expressed opposition to mandatory minimum sentences as a matter of policy. There is certainly no formal inhibition on judges publicly stating their own personal opinions about matters of policy within the domain of Congress, but the fact that their position as a judge may give added weight to their statements should counsel caution in doing so.

There is considerable sentiment in the federal judiciary at the present time against further expansion of federal jurisdiction into areas which have been previously the province of state courts enforcing state laws. Part of this stems from a genuine concern about the erosion of federalism, and the traditional division of responsibility between federal courts and state courts. As long ago as 1922, Chief Justice William Howard Taft warned about "the tendency of Congress toward wider regulation of matters plainly within the federal power which it had not been thought wise theretofore to subject to federal control." Part of the sentiment within the federal judiciary stems from a desire to keep the number of federal judges and federal courts circumscribed as they have been in the past,

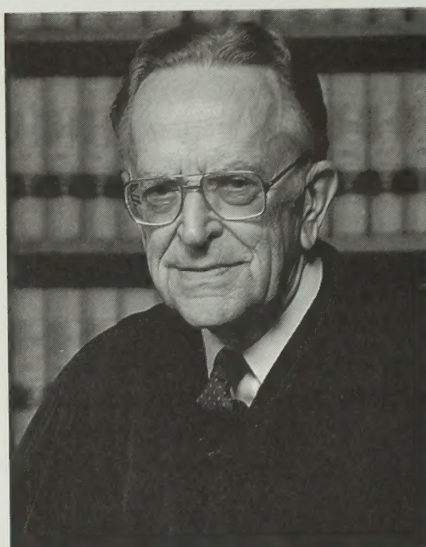
See Year-end Report on page 4

Year-end Report continued from page 3 which many feel is one of the reasons why the federal judiciary has obtained the enviable reputation which it presently enjoys. Congress, of course, is the ultimate arbiter of these questions within constitutional limits, but the future shape and contours of the federal courts is surely a legitimate subject for judicial input to Congress.

II. The Federal Courts' Workload

Unlike last year, filings in the U.S. district courts rose slightly in 1994 while the long-running growth in appeals filings ended with a modest decrease. Overall, district court filings climbed two percent as civil filings increased three percent and criminal filings fell three percent. United States bankruptcy court filings declined seven percent, marking the second consecutive year of lower filings after 10 years of sustained growth. Despite this year's decrease in bankruptcy filings, there are signs (e.g., higher interest rates) that the number of bankruptcy cases filed may begin rising in the near future. After reaching an all-time high of 50,000 cases in 1993, appeals filings fell four percent in 1994.

[Civil case filings in the U.S. district courts increased from 229,900 to 236,400, a 3 percent increase. This rise resulted mostly from increases in private cases involving federal question and diversity of citizenship litigation. Federal question litigation rose 8 percent, primarily due to a 23 percent increase in personal injury product liability cases (chiefly asbestos cases), a 19 percent increase in civil rights filings, and a 12 percent increase in prisoner petitions. Diversity of citizenship cases increased 7 percent, mostly as a result of a 13 percent increase in tort actions and a 17 percent increase in personal injury product liability cases. On the other hand, contract actions decreased 11 percent, primarily as a result of decreases in cases



Retired Justice Harry A. Blackmun

brought by the U.S. government to recover on defaulted student loans (down 53 percent) and overpayments of veterans' benefits (down 50 percent).

Criminal cases in the U.S. district courts fell from 46,800 to 45,500, a 3 percent decline for the second consecutive year. The drop occurred in a majority of criminal offenses including drug filings which saw a 7 percent reduction in prosecutions. However, drug offenses still constitute 25 percent of all criminal case filings. The overall decline would have been greater but traffic and drunk driving violations, usually misdemeanors, rose 14 percent. Immigration offenses were 4 percent higher in 1994 than in 1993.

Filings declined almost 7 percent in the U.S. bankruptcy courts, falling from 897,000 to 838,000. As in 1993, bankruptcy filings decreased under each chapter of the Bankruptcy Code during 1994. Chapters 12 and 11 had the largest percentage decreases at almost 31 and 21 percent, respectively. Chapter 7 filings, which account for over 68 percent of all bankruptcy filings, dropped 8 percent whereas Chapter 13 filings fell 2 percent.

In the courts of appeals, filings dropped for the first time since 1978, down almost 4 percent from 50,000 to

48,000. Almost all areas showed decreases in appeals filed, with the largest percentage decrease in administrative agency appeals, down 14 percent. Criminal appeals declined 10 percent. The only type of appeal which increased this year was prisoner petitions, which rose 2 percent.]

The judiciary's caseload is constantly influenced by external forces. For example, legislation has produced significant changes in the workload of the federal courts. The current climate in the country and the U.S. Congress increases the likelihood that federal jurisdiction will continue to be expanded. Should such expansion take place, this year's decreases in caseload may quickly reverse.

The number of judicial vacancies is another factor that has greatly affected court workload in recent years. Since January 1994, the Clinton administration has reduced the number of judicial vacancies from 118 to 62 (as of December 1, 1994). In 1993, I communicated my hope that the executive and legislative branches would take the necessary steps to fill the 113 vacancies then on the Article III bench. This year I would like to commend the President and the Senate for confirming 101 Article III judges during Congress's Second Session, the highest number in a single year since 1980. With this surge in appointments, the overall vacancy rate on the federal bench dropped from 13 percent to 6 percent. It is my hope that the Administration and Congress will continue to make every effort to fill the remaining vacancies.

III. The Supreme Court of the United States

AN APPRECIATION

On April 6, 1994, Justice Harry Blackmun announced his retirement from the Supreme Court, effective at the end of the 1993 Term. Justice Blackmun served for 24 years on

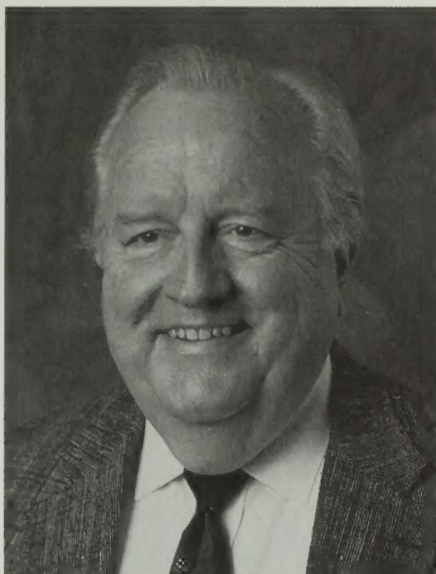
the Court, with two Chief Justices, 16 Associate Justices, and during the administrations of six Presidents. By the end of his tenure on the Court, he had authored more than 300 majority opinions. Justice Blackmun made a significant contribution to the Court's jurisprudence, and he will long be remembered for his careful and dedicated approach to judging.

INVESTITURE OF JUSTICE BREYER

President Clinton nominated Stephen Breyer of Massachusetts to fill Justice Blackmun's seat on the Supreme Court. At the time of his appointment, Justice Breyer was the Chief Judge of the United States Court of Appeals for the First Circuit on which he had served for thirteen years. Justice Breyer took the official oaths in Vermont on August 3, 1994 and the constitutional oath at the White House on August 12, 1994. The formal investiture of Justice Breyer was held in the Supreme Court on September 30, 1994.

CASELOAD STATISTICS

Although the total number of case filings increased in the Supreme



L. Ralph Mecham

Court, fewer cases were heard and decided on the merits. During the 1993 Term, case filings totaled 6,897, a 9.4 percentage increase over the previous term. Continuing a trend from recent years, case filings in the Court's *in forma pauperis* docket increased again—up to 4,796 cases from 4,240 cases the previous term, which represents a 13.1 percentage increase. Between the 1991 and 1992 Terms, the Court's paid docket experienced a slight decrease; the 1993 Term paid docket, however, contained 2,100 cases, an increase of 38 cases over the previous year. The

Court decided 99 cases in the 1993 Term, compared to 116 the previous term. Signed opinions accompanied 84 of the decisions, down from 107 in the 1992 Term. No cases were set down for reargument in the Court's last full term.

IV. The Administrative Office of the United States Courts

In 1939, Congress created the Administrative Office of the United States Courts to provide necessary administrative functions under the supervision and direction of the Conference of Senior Circuit Judges, which subsequently became the Judicial Conference of the United States. For decades, the agency performed ably many centralized support services for the federal courts.

In the mid-1980's, in a foreshadowing of recent executive branch reform ideas, Administrative Office Director L. Ralph Mecham launched a far-reaching decentralization initiative. Faced with increasing budget pressures, and respectful of judicial independence and the historical decentralized administration and autonomy of the courts, this initiative has reinvigorated federal court management by allowing court administrators to make day-to-day spending, procurement, and management decisions, within established guidelines, to meet the individual needs of the courts. Decentralized administrative authority commits every judiciary official to identify ways to economize without diminishing essential services—benefiting the judiciary and the taxpayers.

The next step is to decentralize personnel management responsibilities to the courts. After a four-year study of the judiciary's 33-year-old personnel system, the Judicial Conference approved a new Court Personnel System that will advance modern personnel management ap-

See *Year-end Report* on page 6



At a reception held last September at the Supreme Court, the Chief Justice honors Chief Judge John F. Gerry (D. N.J.) upon his retirement as chairman of the Judicial Conference's Executive Committee.

Year-end Report continued from page 5

proaches to job design and compensation, enabling the courts to make decisions about structuring their work force, within cost controls, according to their needs.

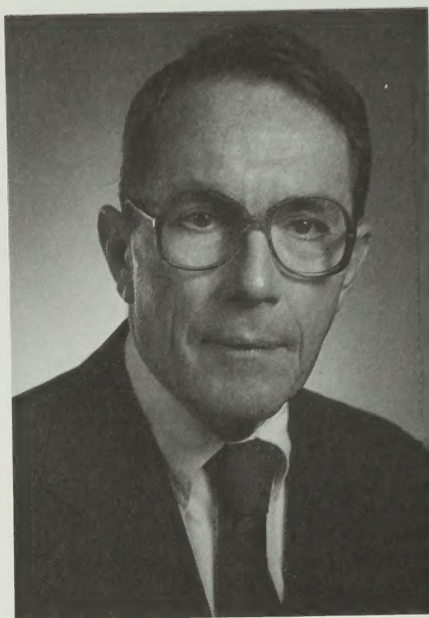
The Administrative Office has been transforming itself from a central control point to an agency dedicated to streamlining processes and cutting red tape; providing policy and program development, guidance, and assessment support for the judiciary; improving operational effectiveness, efficiency, and economy; reaching out to involve court staff in program development decisions; and identifying and addressing priority issues and needs.

The agency's public administrators, lawyers, accountants, systems engineers, statisticians, architects, and other staff work diligently to deliver a wide range of essential services in support of the federal courts. The Administrative Office continues to demonstrate leadership in administrative reform and technological advancement, and in communicating within the judicial branch and with the other branches of government.

V. The Federal Judicial Center

Judicial independence is enhanced when the third branch controls judicial education, research and planning. It is the Federal Judicial Center, established in 1967 on the recommendation of the Judicial Conference, that provides these important functions for the federal courts. It should be funded at levels that ensure its ability to carry out its vital mission. The alternative to the provision of education to judges and court staffs is total reliance on on-the-job training, a prospect which no litigant should view with equanimity.

Almost 2,000 circuit, district, bankruptcy and magistrate judges attended Center education programs this year on a range of timely



Judge William W. Schwarzer

topics—including orientation for over 100 new district judges, many filling long-standing vacancies. Center-provided judicial education enables judges to manage their growing dockets efficiently and fairly and to control the cost and burdens of litigation.

Among the most difficult and fastest growing challenges facing courts are product liability and other mass tort cases, many involving class actions and complex scientific evidence. To help judges manage these cases, the Center will soon publish a new edition of the *Manual for Complex Litigation*. The Center's *Reference Manual on Scientific Evidence* will help judges deal with expert evidence and improve jury trials. Recently a national conference on mass tort litigation for state and federal judges, sponsored by the Center, the State Justice Institute and the National Center for State Courts, brought together state and federal judges to consider more effective approaches to coordination between the two court systems. In addition, the Center has also launched a project to help judges deal with the large numbers of cases brought by prisoners and other *pro se* cases whose litigants are not represented



Judge Rya W. Zobel

by lawyers.

Over 20,000 court employees participated in Center training programs, most of them held in the courthouses, to help increase productivity and provide employees with skills needed to perform increasingly complex duties.

Judge William W. Schwarzer, the Center's director since 1990, reaches the statutory mandatory retirement age this April. To succeed him, the Center's Board has selected District Judge Rya W. Zobel of Boston. The federal courts and those whom they serve owe Judge Schwarzer a debt of gratitude. He has led the Center with creativity, boldness, and vision, increasing the Center's services even as its resources declined. As chair of the Center's Board, I am confident that Judge Zobel will carry on in the same tradition.

CONCLUSION

The courts and Congress must continue to work together in a spirit of cooperation in dealing with the many matters of common interest which confront them. I am confident that they will continue to do so in 1995, just as they have in the past. ✍

JANUARY

27 Friday

Committee on Intercircuit Assignments

27-28 Friday-Saturday

Committee on the Budget

30-31 Monday-Tuesday

Committee on Financial Disclosure

FEBRUARY

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 27 Number 1 January 1995

16-17 Thursday-Friday

Executive Committee

16-17 Thursday-Friday

Advisory Committee on Civil Rules

27-March 1 Monday-Wednesday

Workshop for Bankruptcy Judges

CLERK OF COURT, U.S. Court of Appeals for the D.C. Circuit

The Clerk of Court oversees administrative operations of the clerk's office. Applicants must have eight years of progressively responsible administrative or legal experience, including at least three years in a position with substantial management responsibility. An advanced degree in law, management, or in a related field is desired. Applicants must have knowledge of automated systems and possess strong analytical, communications and interpersonal skills. Salary: \$96,530-\$114,129. To apply, send resume to Circuit Executive, U.S. Courts for the District of Columbia Circuit, 4826 U.S. Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001. **Open until February 28, 1995.**

FEDERAL PUBLIC DEFENDER, District of Hawaii

The U.S. Court of Appeals for the Ninth Circuit invites applications from all qualified persons for the position of Federal Public Defender for the District of Hawaii and Guam. The office is headquartered in Honolulu. The term of appointment is four years. The current authorized salary is \$115,700. Application materials can be obtained by writing to the Office of the Circuit Executive at P.O. Box 193846, San Francisco, CA 94119-3846, Attn: FPD Recruitment-District of Hawaii. The application form also is available on computer disk (WordPerfect 5.1 format). If you elect this form, you must send a blank 5 1/4" (1.2mb/360k) or 3 1/2" (720k/1.44mb) disk along with your request for an application. Completed applications must be sent to the above address and must be received no later than the close of business on **Tuesday, January 31, 1995.**

CLERK OF COURT, District of Alaska

The U.S. District Court for the District of Alaska, headquartered in Anchorage with divisional offices in Ketchikan, Juneau, Fairbanks and Nome, is seeking qualified applicants for the position of Clerk of Court. The clerk's office staff consists of 28 full-time equivalent positions. Salary: JSF-16 (\$79,684 - \$103,589 +25 percent COLA at this time). Interested applicants should submit an SF171 or AO79 and detailed resume to Clerk of Court Search Committee, c/o Clerk, U.S. District Court for the District of Alaska, 222 West 7th Avenue #4, Anchorage, AK 99513. Applications must be received by **April 1, 1995**, unless extended.

BANKRUPTCY JUDGE, Southern District of New York

Applicants are being sought for a Bankruptcy Judge position in the Southern District of New York in Manhattan. Appointment is to a 14-year term, at a salary of \$122,912. Qualifications include being a member in good standing of the bar of the highest court of a state. Experience in litigation is expected, but specific experience in bankruptcy is not a requirement. For further information and an application form please contact Steven Flanders, Circuit Executive, at 1803 U.S. Courthouse, 40 Foley Square, New York, NY 10007. Applications must be submitted to the above address by **January 31, 1995.**

EXECUTIVE DIRECTOR, Western Kentucky Federal Community Defender, Inc.

Applications for the position of Executive Director for the Western Kentucky Federal Community Defender, Inc., headquartered at Louisville, are now being accepted. Salary: \$85,000-\$110,000, depending on experience. An application form may be obtained by writing Personnel Specialist, U.S. District Court, Western District of Kentucky, Room 450, 601 West Broadway, Louisville, KY 40202. Completed applications must be received at the above address by **March 3, 1995.**

EQUAL OPPORTUNITY EMPLOYERS

Leaked Report Criticizes Courthouse Construction Process

A report leaked to the press last month by staff of the Senate Environmental and Public Works Committee may result in congressional hearings this year on courthouse construction. Prepared by staff for the committee's former chair, Senator Max Baucus (D-Mont.), the report is critical of the General Services Administration (GSA), federal judges, the Administrative Office, and Congress for their respective roles in courthouse construction. The report, which focuses on the Foley Square project in Manhattan and the new Boston courthouse, calls for a moratorium on the approval of all new federal courthouse construction until certain reforms have been implemented.

Following the leak of the report, Senator Daniel Patrick Moynihan (D-N.Y.) wrote to the committee's new chair, Senator John H. Chafee (R-R.I.), suggesting that he convene hearings on "public buildings activities." Moynihan previously had made a similar request of Baucus following a tour he took of the Foley Square project. In his letter,



Senator John H. Chafee

Moynihan also indicated that he and other committee members had not seen the report prior to its leak to the media.

Furthermore, despite repeated requests, judges, AO staff, and officials and staff of the GSA were never afforded an opportunity to review or comment on the report before it was released.

The report fails to fully acknowledge the roles of Congress, the GSA, and the executive branch in approv-

ing courthouse construction projects and as a result overemphasizes the involvement of the Judiciary in this process. It also attacks the Judiciary's long-range space planning process, even though the courts are believed to be the only government entity engaged in this activity. Other portions of the report are based on out-dated and unverified information.

Within hours of the official release of the report, the AO issued a statement critical of the tactics used by the committee staff as well as the content of the report. The Judicial Conference's Committee on Security, Space and Facilities and AO staff, in conjunction with the GSA and the courts mentioned in the report, are preparing a more detailed analysis of the report.

The GSA also issued a statement, making reference to "many sensational stories in the media recently concerning federal courthouse construction." It noted the partnership formed between the courts and the GSA to bring greater efficiencies and cost savings to the courthouse construction process.

National Bankruptcy Review Commission Members Named

Judge Edith H. Jones (5th Cir.) and Bankruptcy Judge Robert E. Ginsberg (N. D. Ill.) have been named by the Chief Justice as members of the National Bankruptcy Review Commission. The nine-member commission was created by P.L. 103-94, the Bankruptcy Reform Act of 1994. According to the statute, the commission will study issues relating to the Bankruptcy Code, although there are no specific subject areas mandated for review. Two years after the commission's first

meeting, it will submit a report to Congress, the Chief Justice, and the President on its findings, with recommendations for any legislative or administrative actions to improve the Bankruptcy Code.

Jones was appointed to the Court of Appeals for the Fifth Circuit in 1985. She received her law degree from the University of Texas School of Law in 1974, then entered private practice with the Houston firm of Andrews & Kurth, where she concentrated on commercial and

bankruptcy litigation.

Ginsberg was appointed to serve as a bankruptcy judge in 1985. He received his law degree from American University in 1969 and a LL.M. from Harvard University in 1974. Ginsberg worked as an attorney with the U.S. Securities and Exchange Commission from 1969 to 1973, and was in private practice from 1977 to 1985.

In addition to appointments by the Chief Justice, members of the

See Commission on page 9

JUDICIAL MILESTONES

Appointed: Frederic Block, as U.S. District Judge, U.S. District Court for the Eastern District of New York, October 31.

Appointed: Salvador E. Casellas, as U.S. District Judge, U.S. District Court for the District of Puerto Rico, November 1.

Appointed: Daniel R. Dominguez, as U.S. District Judge, U.S. District Court for the District of Puerto Rico, November 1.

Appointed: Stanwood R. Duval Jr., as U.S. District Judge, U.S. District Court for the Eastern District of Louisiana, October 31.

Appointed: Helen W. Gillmor, as U.S. District Judge, U.S. District Court for the District of Hawaii, October 31.

Appointed: John Gleeson, as U.S. District Judge, U.S. District Court for the Eastern District of New York, October 25.

Appointed: David F. Hamilton, as U.S. District Judge, U.S. District Court for the Southern District of Indiana, October 28.

Appointed: Okla Jones II, as U.S. District Judge, U.S. District Court for the Eastern District of Louisiana, October 28.

Appointed: J. Kelley Arnold, as U.S. Magistrate Judge, U.S. District Court for the Western District of Washington, October 28.

Appointed: Blanche M. Manning, as U.S. District Judge, U.S. District Court for the Northern District of Illinois, October 18.

Appointed: William T. Moore Jr., as U.S. District Judge, U.S. District Court for the Southern District of Georgia, October 31.

Appointed: Kathleen M. O'Malley, as U.S. District Judge, U.S. District Court for the Northern District of Ohio, October 22.

Appointed: G. Thomas Porteous Jr., as U.S. District Judge, U.S. District Court for the Eastern District of Louisiana, October 28.

Appointed: Paul E. Riley, as U.S. District Judge, U.S. District Court for the Southern District of Illinois, October 21.

Elevated: Judge Thomas R. Brett, to Chief Judge, U.S. District Court for the Northern District of Oklahoma, succeeding Chief Judge James O. Ellison, November 7.

Elevated: Chief Judge Fred I. Parker, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Second Circuit, October 11.

Elevated: Bankruptcy Judge Russell J. Hill, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Iowa, succeeding Chief Bankruptcy Judge Lee M. Jackwig, November 2.

Elevated: District Judge H. Lee Sarokin, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Third Circuit, October 28.

Senior Status: Judge Harold Albert Baker, U.S. District Court for the Central District of Illinois, October 4.

Senior Status: Judge David N. Edelstein, U.S. District Court for the Southern District of New York, November 1.

Senior Status: Chief Judge James O. Ellison, U.S. District Court for the Northern District of Oklahoma, November 7.

Retired: Bankruptcy Judge Peder K. Ecker, U.S. Bankruptcy Court for the District of South Dakota, October 31.

Deceased: Senior Judge Richard H. Chambers, U.S. Court of Appeals for the Ninth Circuit, October 21.

Deceased: Senior Judge Charles E. Stewart Jr., U.S. District Court for the Southern District of New York, October 28.

THE THIRD BRANCH

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of the United States

JUDICIAL BOXSCORE

As of January 1, 1995

Courts of Appeals	
Vacancies	16
District Courts	
Vacancies	52
Court of International Trade	
Vacancies	2
Courts with "Judicial Emergencies"	24

Commission continued from page 7
commission also were selected by the President, the President Pro Tempore and Minority Leader of the Senate, and by the Speaker and Minority Leader of the House.

The President named former Representative Michael Synar (D-Okla.) chairman of the commission. The President also appointed Jay Alix, president of Jay Alix & Associates, a consulting firm specializing in bankruptcy reorganizations, and Babette A. Ceccotti, a partner at Cohen, Weiss and Simon, a law firm specializing in the representation of labor organizations and Taft Hartley pension and health trust funds.

From the House, former Representative M. Caldwell Butler was appointed by retiring Minority Leader Robert H. Michel (R-Ill.). Butler is a bankruptcy partner at the law firm of Woods, Rogers & Hazelgrove. Former House Speaker Tom Foley (D-Wash.) named real estate lawyer John A. Gose, a partner at the law



Judge Edith H. Jones

firm of Preston Gates & Ellis, to the commission.

From the Senate, Jeffery J. Hartley was appointed by retiring Senate Majority Leader George Mitchell (D-Me.), upon the recommendation of Senator Howell T. Heflin (D-Ala.). Currently law clerk to Bankruptcy Judge Margaret A. Mahoney (S.D.



Bankruptcy Judge Robert E. Ginsberg

Ala.), Hartley helped draft the Bankruptcy Reform Act as a member of the majority staff for the Senate Judiciary Committee. Incoming Senate Majority Leader Bob Dole (R-Kan.) named James I. Shepard, a bankruptcy and insolvency tax consultant in Fresno, California.

Executive Committee Resolution Lauds Work of AO and Its Director

Late last year *Legal Times*, a weekly newspaper published by American Lawyer Media, L.P., printed a lengthy story attacking the Administrative Office for being the "judges' advocate." The Executive Committee of the Judicial Conference responded by unanimously adopting the following resolution:

"Having reviewed carefully the article by Naftali Bendavid in the October 24, 1994, *Legal Times*, it is the unanimous view of the Executive Committee of the Judicial Conference of the United States that the article is inaccurate and unfair.

Since he began in 1985, Director L. Ralph Mecham has been instrumental in leading the Administrative Office toward the accomplishment of

its statutory mission: providing high quality support and service to the federal judiciary. Under Director Mecham's outstanding leadership, the Administrative Office has successfully dedicated itself to the achievement of these goals. This success helps ensure an effective, smoothly running judicial machine—one upon which the public can and does rely with confidence and respect.

The Executive Committee supports fully the work of the Administrative Office and endorses the goals of the agency as set by its Director. We encourage the Administrative Office and its Director to continue to provide the same caliber of excellence in its service to the courts and

the public at large."

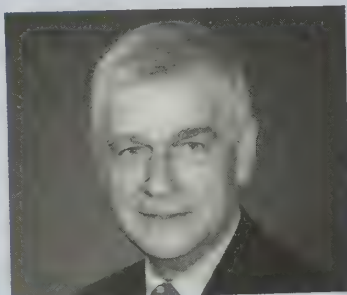
Prior to publication of the *Legal Times* article, former Chief Judge John F. Gerry (D. N.J.), who for nearly three years had worked closely with the AO and its director during his tenure as chairman of the Executive Committee, praised the agency and its staff. "The past nine years have been the golden age of judicial administration at the national level under Director Ralph Mecham and Chief Justice Rehnquist," Gerry said. He described Mecham as "a giant in the field of federal court administration."

Gerry had not been contacted by the paper in the preparation of its article on the AO.

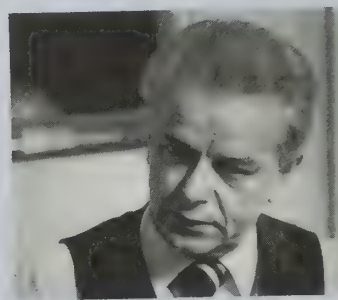
New Congressional Committees Begin to Take Shape

As the 104th Congress convened in Washington, the new Republican majority in both houses was reflected in changes in committee memberships and chairs. The composition of House and Senate committees has been set, with subcommittee membership in both houses to be finalized by mid-January. This listing of House and Senate Appropriations and Judiciary Committees was complete as *The Third Branch* went to press in early January. In future issues, the newsletter will contain up-to-date information on who is on key committees and subcommittees.

Senate Appropriations Committee



Senator Mark O. Hatfield



Senator Robert C. Byrd

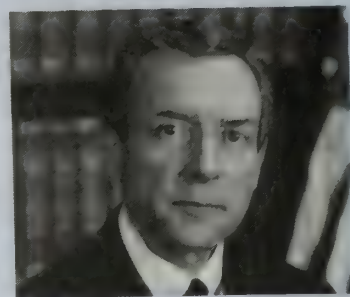
Republicans

Mark O. Hatfield (Or.), chair
 Ted Stevens (Alaska)
 Thad Cochran (Miss.)
 Arlen Specter (Pa.)
 Pete V. Dominici (N.M.)
 Phil Gramm (Tex.)
 Christopher S. Bond (Mo.)
 Slade Gorton (Wash.)
 Mitch McConnell (Ky.)
 Connie Mack (Fla.)
 Conrad Burns (Mont.)
Richard C. Shelby (Ala.)
James M. Jeffords (Vt.)
Judd Gregg (N.H.)
Robert F. Bennett (Utah)

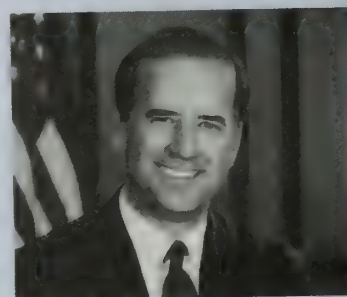
Democrats

Robert C. Byrd (W.Va.), ranking
 Daniel K. Inouye (Hawaii)
 Ernest F. Hollings (S.C.)
 J. Bennett Johnston (La.)
 Patrick J. Leahy (Vt.)
 Dale Bumpers (Ark.)
 Frank R. Lautenberg (N.J.)
 Tom Harkin (Iowa)
 Barbara A. Mikulski (Md.)
 Harry Reid (Nev.)
 Bob Kerrey (Neb.)
 Herb Kohl (Wis.)
 Patty Murray (Wash.)

Senate Judiciary Committee



Senator Orrin Hatch



Senator Joseph R. Biden, Jr.

Republicans

Orrin Hatch (Utah), chairman
 Strom Thurmond (S.C.)
 Alan K. Simpson (Wyo.)
 Charles E. Grassley (Iowa)
 Arlen Specter (Pa.)
 Hank Brown (Colo.)
Fred Thompson (Tenn.)
Jon Kyl (Ariz.)
Mike DeWine (Ohio)
Spencer Abraham (Mich.)

Democrats

Joseph R. Biden Jr. (Del.), ranking
 Edward M. Kennedy (Mass.)
 Patrick J. Leahy (Vt.)
 Howell Heflin (Ala.)
 Paul Simon (Ill.)
 Herb Kohl (Wis.)
 Dianne Feinstein (Cal.)
Russell D. Feingold (Wis.)

Bold=new committee member

Italic and bold=freshman member

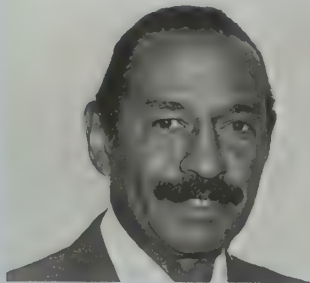
House Judiciary Committee

Republicans

Henry J. Hyde (Ill.), chair
 Carlos J. Moorhead (Cal.)
 F. James Sensenbrenner (Wis.)
 Bill McCollum (Fla.)
 George W. Gekas (Pa.)
 Howard Coble (N.C.)
 Lamar Smith (Tex.)
 Steven H. Schiff (N.M.)
 Elton Gallegly (Cal.)
 Charles T. Canady (Fla.)
 Bob Inglis (S.C.)
 Robert W. Goodlatte (Va.)
 Stephen E. Buyer (Ind.)
 Martin R. Hoke (Ohio)
 Sonny Bono (Cal.)
 Fred Heineman (N.C.)
 Ed Bryant (Tenn.)
 Steve Chabot (Ohio)
 Michael Patrick Flanagan (Ill.)
 Bob Barr (Ga.)



Representative Henry J. Hyde



Representative John Conyers Jr.

Democrats

John Conyers Jr. (Mich.), ranking
 Patricia Schroeder (Colo.)
 Barney Frank (Mass.)
 Charles E. Schumer (N.Y.)
 Howard L. Berman (Cal.)
 Rick Boucher (Va.)
 John Bryant (Tex.)
 Jack Reed (R.I.)
 Jerrold Nadler (N.Y.)
 Robert C. Scott (Va.)
 Melvin Watt (N.C.)
 Xavier Becerra (Cal.)
 Jose E. Serrano (N.Y.)
 Zoe Lofgren (Cal.)
 Shelia Jackson-Lee (Tex.)

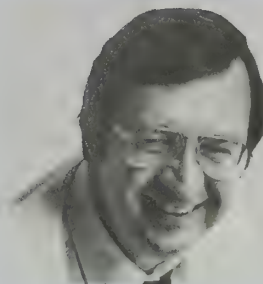
House Appropriations Committee

Republicans

Bob R. Livingston (La), chair
 Joseph M. McDade (Pa.)
 John T. Myers (Ind.)
 C. W. Bill Young (Fla.)
 Ralph Regula (Ohio)
 Jerry Lewis (Cal.)
 John Edward Porter (Ill.)
 Harold Rogers (Ky.)
 Joe Skeen (N.M.)
 Frank R. Wolf (Va.)
 Tom DeLay (Tex.)
 Jim Kolbe (Ariz.)
 Barbara F. Vucanovich (Nev.)
 Jim Ross Lightfoot (Iowa)
 Ron Packard (Cal.)
 Sonny Callahan (Ala.)
 James T. Walsh (N.Y.)
 Charles H. Taylor (N.C.)
 David L. Hobson (Ohio)
 Ernest J. Istook Jr. (Okla.)
 Henry Bonilla (Tex.)
 Joe Knollenberg (Mich.)
 Dan Miller (Fla.)
 Jay Dickey (Ariz.)



Representative Bob R. Livingston



Representative David R. Obey

Jack Kingston (Ga.)
 Frank Riggs (Cal.)
 Rodney Frelinghuysen (N.J.)
 Roger Wicker (Miss.)
 Michael P. Forbes (N.Y.)
 George Nethercutt (Wash.)
 Jim Bunn (Or.)
 Mark W. Neumann (Wis.)

Democrats

David R. Obey (Wis.), ranking
 Sidney R. Yates (Ill.)

Louis Stokes (Ohio)
 Tom Bevill (Ala.)
 John P. Murtha (Pa.)
 Charles Wilson (Tex.)
 Norman D. Dicks (Wash.)
 Martin Olav Sabo (Minn.)
 Julian C. Dixon (Cal.)
 Vic Fazio (Cal.)
 W.G. (Bill) Hefner (N.C.)
 Steny H. Hoyer (Md.)
 Richard J. Durbin (Ill.)
 Ronald D. Coleman (Tex.)

Alan B. Mollohan (W.Va.)
 Jim Chapman (Tex.)
 Marcy Kaptur (Ohio)
 David E. Skaggs (Colo.)
 Nancy Pelosi (Cal.)
 Peter J. Visclosky (Ind.)
 Thomas M. Foglietta (Pa.)
 Esteban E. Torres (Cal.)
 Nita M. Lowey (N.Y.)
 Ray Thornton (Ark.)

Wardens Advocate Prevention, Not Mandatory Minimums, to Stop Crime

A group with firsthand experience in the prison system says mandatory minimum sentences, more prisons, and longer sentences will not reduce crime, according to a survey released last month. Senator Paul Simon (D-Ill.), a member of the Senate Judiciary Committee, surveyed 195 wardens of state prisons in California, Illinois, Florida, Michigan, Ohio, Pennsylvania, Texas, and Delaware. According to Simon's survey, 85 percent of the wardens do not think that most elected officials in America are offering effective solutions to crime. Over half, 58 percent, of the wardens oppose mandatory minimum sentences of 5, 10, 20 or more years for drug crimes; and 65 percent would use prison space more efficiently by imposing shorter sentences on non-violent offenders and longer sen-

tences on violent ones.

What do the wardens propose to stop crime? The survey says they advocate prevention and law enforcement. Wardens looked at the root causes of crime and 71 percent called for improved education in the schools, 66 percent for expanded employment opportunities, and 62 percent for programs to teach young parents how to be better mothers and fathers. And if given a choice between more police or longer sentences, 78 percent of the wardens called for the former, saying that the resulting increase in certainty of apprehension is more effective in reducing crime.

To reduce recidivism, according to the survey, the majority of wardens support prison drug treatment programs, vocational training, psy-

chological counseling, and literacy and other educational programs. They also overwhelmingly favor alternatives to incarceration such as home detention, halfway houses, boot camps, and residential drug treatment programs. It was their common belief that half of the prisoners under their supervision would not be a danger to society if released.

Simon also surveyed 925 prisoners and found that wardens and inmates show a remarkable similarity of views when it comes to what reduces crime. Nearly half of the prisoners said drug treatment and employment opportunities were key, but only 30 percent said "make public schools better." People break the law, the surveyed prisoners said, because of drugs and/or alcohol, joblessness, or a bad family life.

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Judiciary Seeks Exclusion from Line-item Veto



Chief Judge Gilbert S. Merritt (6th Cir.) testifies before a joint House-Senate committee on line-item veto legislation.

In order to continue its tradition of providing justice to American citizens and as a co-equal branch of government, the federal Judiciary should be excluded from coverage under the proposed line-item veto legislation, a representative of the Judiciary told a joint House-Senate committee last month.

"These protections need to endure," said Chief Judge Gilbert S. Merritt (6th Cir.), chairman of the Executive Committee of the Judicial Conference. "While Congress and the President attempt to reallocate between themselves the power to en-

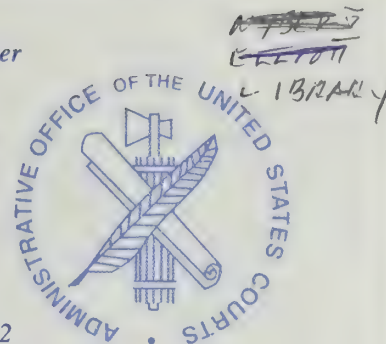
act and approve what are often complex and controversial appropriations bills, the Judiciary should not be a part of that process. The Congress can protect itself but the Judiciary would be at the mercy of the executive branch," Merritt said in his testimony at a joint hearing of the Senate Committee on Governmental Affairs and the House Committee on Government Reform and Oversight.

"It requires little imagination to see how one of the greatest threats to this independence could come from undue financial pressures by the

See Veto on page 2

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February 1995



House Passes New Crime Package

Less than six months after President Clinton signed anti-crime legislation into law, Congress is revisiting the issue with the Taking Back Our Streets Act, which is part of the "Contract with America." The Senate is considering crime legislation of its own and the Senate Judiciary Committee is expected to hold a series of hearings on crime issues.

At least initially, the House appears to be taking the lead on the crime legislation in the 104th Congress. The House legislation has been divided into several separate bills, six of which already have been passed by the full House. There are several provisions in the House bill that will be of interest to the Judiciary. They are:

- **Mandatory restitution:** The Judicial Conference has expressed serious concerns with mandatory restitution as a form of mandatory sentencing. Furthermore, imposition of restitution without taking into account the ability to pay could make many such orders unenforceable, resulting in wasteful and unnecessary collection efforts. Significant judicial resources could be expended for relatively minimum returns to victims.

See Crime on page 4

INSIDE

Judiciary MAP Helps Improve Courts' Work	5
Congressional Subcommittees Finalize Rosters	6
Draft Judgeship Bill Transmitted to Congress	9

Veto continued from page 1
 executive branch. The last thing needed is a new mechanism to give the executive branch control over the Judiciary's budget, particularly in light of the fact that the United States, almost always through the executive branch, has more lawsuits in the federal courts than any other litigant," said Merritt.

Nevertheless, earlier this month the House passed the line-item veto legislation, including the provision covering the Judiciary. During House consideration of the bill, Representative James Moran (D-Va.) offered an amendment to the line-item veto provision, which would have exempted the discretionary budget authority of the judicial branch. "I implore my colleagues, please pass this amendment," Moran said. "Maintain the separation of powers and show the respect of our founding fathers in the Constitution that has endured for the past 200 years." Moran's amendment failed by a vote of 119 to 309. It appeared from the hearings and the debate that House Republicans feel the need to abide by the "Contract with America" as originally presented to voters, even though some Republicans have said they agree with the Judiciary's position.

The Senate has two different line-item veto bills, both of which include the Judiciary. It's timetable for action is uncertain since the Senate Republicans did not sign the House's "Contract with America" and are not under the same time constraints as House members.

As currently drafted, the line-item veto legislation applies to discretionary funding, which encompasses the vast majority of the Judiciary's appropriations. Only the salaries of Article III judges and bankruptcy judges and retirement-related programs currently are classified as

mandatory and would not be subject to a line-item veto. The line-item veto provision is contained in the Fiscal Responsibility Act, one of the bills that composes the "Contract with America."

Since the creation of the Administrative Office in 1939, the financial



(L to R) Senator Fred Thompson (R-Tenn.) and Chief Judge Gilbert S. Merritt (6th Cir.) talk after a hearing on line-item veto legislation.

affairs of the federal Judiciary have been carefully insulated from executive branch influence. However, prior to this time, budget submissions and all other administrative support services for the lower federal courts were provided by the executive branch through the Department of Justice. The inevitable conflict inherent in this process reached a crisis level during the 1930s when the executive branch actively and unilaterally cut the Judiciary's funding, forced the firing of many court staff, and cut the salaries of senior judges' secretaries in half. The pleas of judges at the time were ignored or rejected.

"The Judiciary's budget requests are subjected to full review by the congressional appropriations committees in keeping with the fiscal power conferred on Congress by the Constitution," said Merritt. "The Judiciary must justify each dollar it receives. This is appropriate and the Judiciary cheerfully respects this role of Congress. We do not get a free ride; we never get all that we ask for or need. But the balance would be tilted dangerously toward executive dominance and control over the Judiciary if the President had line-item veto authority over the judicial branch," Merritt told the joint committee. The federal Judiciary's budget represents two-tenths of 1 percent of the federal budget.

Even the current protections have not insulated the Judiciary from external influence and funding shortages. In 1986 and 1993, inadequate funds forced a deferral of payments of court-appointed criminal defense counsel and a shortage of funds to pay jurors in civil trials. And, in 1989, 1993, and 1994, in violation of the Budget and Accounting Act, the executive branch reduced the Judiciary's budget request by a total of more than \$1 billion.

Furthermore, the Judiciary's budget does not include funding for courthouse construction so that an exclusion from the line-item veto would not exempt these funds. The General Services Administration, the Office of Management and Budget, and Congress control courthouse construction funding.

"It seems inconsistent to prohibit the executive branch from changing the Judiciary's budget prior to submission, but then give the President unilateral authority to revise an enacted budget," Merritt said.

Pollack Named Recipient of 13th Annual Devitt Award

Senior Judge Milton Pollack (S.D. N.Y.) is the recipient of the Thirteenth Annual Edward J. Devitt Distinguished Service to Justice Award.

Pollack's "willingness to use innovative techniques for the resolution of complex and protracted litigation" was cited by the selection committee in making the award. Over a period of three years and under Pollack's guidance, the Drexel Burnham Lambert cases were settled. These cases involved more than 180 suits with the potential for litigation lasting into the next century. According to the committee, Pollack "demonstrated in a decisive way that the federal Judiciary and its courts are capable of resolving with energy and efficiency the most complex of disputes in an ever more sophisticated society."



Judge Milton Pollack

Pollack was named to the federal bench in 1967 and took senior status in 1983. He has served on numerous

Judicial Conference committees, including the Committee on Court Administration (1971-1987) and the Subcommittee to Examine Possible Alternative to Jury Trials in Complex Protracted Civil Cases (1979-1984). He has served since 1983 on the Judicial Panel on Multidistrict Litigation.

The Edward J. Devitt Distinguished Service to Justice Award recognizes the dedicated public service of members of the federal Judiciary and honors Judge Devitt who was the longtime chief judge for the District of Minnesota. All Article III judges are eligible for the award. This year's award selection committee consisted of Justice Anthony M. Kennedy (S.C.), chairman; Chief Judge Richard Arnold (8th Cir.); and Chief Judge Sarah Barker (S.D. Ind.).

Congressional Accountability Act Signed Into Law

On January 23, 1995, the President signed the Congressional Accountability Act of 1995, P. L. 104-1, which is the first legislation enacted by the 104th Congress. The bill applies to existing employment, civil rights, health, and safety-related statutes and regulations to the legislative branch. However, the legislation does not allow Congress a narrow opportunity to adopt rules, which could potentially limit the applicability of the statutes.

The Congressional Accountability Act also calls for the Judicial Conference to prepare a report for submission by the Chief Justice to Congress on the application of the provisions contained in the act to the judicial branch. The report is to be submitted no later than December 31, 1996, and to include any recommendations

the Conference may have. The Conference's Committee on Judicial Resources will play the lead role in preparing the study. Assistance will come from the Committees on Security, Space and Facilities; Court Administration and Case Management; Defender Services; and the Judicial Branch. The Administrative Office's Human Resources and Statistics Division, which staffs the Committee on Judicial Resources, will manage the study with close involvement of the Office of General Counsel and other appropriate components of the Judiciary.

The study will encompass applicability of the following provisions of the Congressional Accountability Act to the third branch:

- The Fair Labor Standards Act of 1938;

- Title VII of the Civil Rights Act of 1964;

- The Americans with Disabilities Act of 1990;

- The Age Discrimination in Employment Act of 1967;

- The Family and Medical Leave Act of 1993;

- The Occupational Safety and Health Act of 1970;

- The Employee Polygraph Protection Act of 1988;

- The Worker Adjustment and Retraining Act;

- The Rehabilitation Act of 1973;

- Chapter 43 (relating to veterans' employment and reemployment) of Title 38, United States Code; and,

- Chapter 71 (relating to federal service labor-management relations) of Title 5, United States Code.

Crime continued from page 1

■ **Habeas Corpus:** The proposed legislation would amend both general and capital habeas corpus procedures. For non-capital habeas corpus petitions, the bill would fix a deadline for state and federal prisoners to file petitions in district court and would allow the federal court to deny a petition on the merits even though a petitioner may have failed to exhaust state remedies. The provision would also shift the authority to grant certificates of probable cause from the district courts to the courts of appeals. The capital habeas corpus provisions, which are modeled after the report of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases (the Powell Committee report), would establish special procedures that would be applicable in those states opting to create a mechanism for the appointment of counsel in state-court post-conviction proceedings. In addition, a time frame would be created during which petitions must be filed in federal court. The Judicial Conference endorsed a modified version of the Powell Committee report. The bill would set timetables in both the district court and courts of appeals for determinations of the capital habeas corpus petitions. An amendment offered by Representative Christopher Cox (R-Calif.) during floor debate was adopted that would affect cases involving general and capital habeas petitions. Under the amendment, according to Cox, "State decisions that are reasonable on the law and the facts will be upheld by a habeas review."

Democrats argued that this amendment embodies the "full and fair" concept, and that its passage would effectively end all rights of habeas corpus if minimal state guarantees are satisfied.

■ **Prisoner Lawsuits:** The Judicial Conference has generally supported the requirement that state prisoners

exhaust state administrative remedies during a continuance of their civil rights actions during a fixed time frame. The House-passed changes would modify the existing exhaustion provision to require a state prisoner to exhaust available state administrative remedies when they have been certified or approved as presently provided, prior to the filing of a civil rights action in federal court. Other changes include authorizing federal courts to dismiss prisoner civil rights and all in forma pauperis actions for failure to state a claim upon which relief may be granted; deleting one of the five minimum standards established by current law for state grievance procedures; and requiring courts to request prisoner asset information and then impose a full or partial filing fee based upon the prisoner's ability to pay.

■ **Exclusionary Rule:** The House legislation would create a "good faith" exception to the exclusionary rule so that evidence of wrongdoing may be used in prosecutions even when such evidence was mistakenly seized by law enforcement officers acting, from the court's objective perspective, in good faith. In 1985, the Judicial Conference opposed a similar proposal, holding that to the extent that such legislation codified current law, it was unnecessary. The Conference further held that extension of the good faith exception should be left to the courts.


Although not bound by the timetable set for completion of the "Contract with America," the Senate is expected to proceed quickly with consideration of crime legislation. Senate Judiciary Committee Chairman Orrin Hatch (R-Utah) has said that the Senate is likely to consider a single crime bill rather than the House's approach of dividing up the legislation into a series of bills. Hatch said he hopes to have a mark-up next month.

There will be at least two principal crime bills to consider in the Senate, in addition to the House-passed legislation. The Senate crime bills contain several new mandatory minimum sentences for drug-related crimes and firearms-related offenses. The bills also would amend a number of provisions that were in last year's anti-crime legislation.

Pending bills would include an expansion of the provision enacted last year regarding the prosecution of juveniles 13 or older as adults, mandatory restitution to victims of violent crimes, and a narrowing of the safety valve provision, which permits judges to impose sentences below mandatory minimum levels under specific circumstances. The principal Senate bills also would grant funding to expand, modify, operate or improve conventional correctional facilities to those states that implement truth in sentencing laws that ensure violent offenders serve a substantial portion of the sentences imposed.

Almost as important as what is in the bills, is what has been left out. None of the principal Senate bills, or House bills that have reached the floor, contain the so-called "D'Amato Amendments," which would federalize state offenses committed with firearms. Nevertheless, it is believed that the provisions may be offered as amendments at a later date, perhaps when consideration is given to a repeal of the assault weapon ban enacted last year.

President Clinton has said he will veto a crime bill if it reaches his desk containing either a repeal of last year's commitment to funding 100,000 new police officers or the assault weapon ban.

Neither the House or Senate bills would impact on the authorization of a \$200 million appropriation for the Judiciary, which is part of the Violent Crime Reduction Trust Fund contained in the crime bill enacted last year. 

Judiciary MAP Helps Courts Improve Work Practices

Can better business practices improve the delivery of justice? While quality control, methods analysis, and work center descriptions might be more familiar terms to the business or corporate world, the methodology they represent can produce better practices for the Judiciary that improve the administration of justice—especially in the face of court unit staffing shortages. That was the conclusion of a work group tasked by the Economy Subcommittee of the Budget Committee and the Judicial Resources Committee of the Judicial Conference with examining the role of work measurement in the Judiciary and how this function might be improved.

The work group, led by the Administrative Office's Analytical Services Office, brought representatives from Judiciary court units together with specialists in organizational design and business process re-engineering. They studied the latest work measurement and industrial engineering practices and sampled how some government agencies and private industries incorporate effective organizational structures into staffing requirement development. The result was the Judiciary's own Methods Analysis Program (Judiciary MAP). The program helps the courts identify better practices for performing work, encourages court units to adopt these or similar practices and, as a consequence, eases the burdens associated with funding shortages.

Judiciary MAP recognizes that no single system of better practices works for everybody. Different courts require different structures and practices. Identifying better practices for each court will involve the cooperation of judicial officers, court units, and AO staff. The process centers on workshops, the first of which is used to develop a de-

scription of each court unit's tasks. This Work Center Description (WCD) is key. From this description, better practices can be developed and implemented by court units. In the long term, these practices will be incorporated into the work measurement process.

To test how the Judiciary MAP works in real world conditions, the process was applied to the presentence report function in the probation offices. Probation offices across the country helped to produce the WCD, with 90 percent of the offices responding to survey questions on how frequently they performed the itemized tasks in the WCD. Offices also were asked to include information on better practices that their district may already use. The survey responses identified seven areas of better practices that were efficient, timesaving, and could be adaptable throughout the probation system. A total of 34 better practices were recommended and endorsed by the members of the Chief's Advisory Council's Policy and Planning Committee. Recommendations that resulted in revisions to national standards for petty offense and post sentence reports were approved by the Committee on Criminal Law for submission to the Judicial Conference in March. The Probation and Pretrial Services Automation Umbrella Group and the Committee on Automation and Technology are considering the value of other recommendations. Still other recommendations can be implemented immediately at the district level.

This validation of the Judiciary MAP means that other court unit representatives working with AO staff can begin studying functions in their units and applying MAP concepts.

Better Practices

The better practices recommended for the presentence function range from simple changes in communications to the more complex automation of presentence report. Here are some examples:

- Use automated notification systems, networked with the court schedules and calendars to notify when to begin presentence procedures.
- On a rotational basis, name a probation officer to attend all plea hearings or verdicts, allowing other officers time to devote to other duties.
- Limit trial attendance to the closing arguments or verdict.
- Re-examine the home visit policy. What task will a home visit accomplish?
- Use court minutes to obtain presentence report referrals.
- Request collateral information by mail, telephone or fax/electronic mail.
- Ask the chief judge or the court's probation committee to give instructions directing defense counsel to escort the defendant to the probation office for the presentence report.
- Use the Automated Presentence Report Application (APRA) and templates for uniform presentence reports.
- Establish a resource library in one common location housing updated materials.
- Routinely assess training needs and provide on-going training.

House and Senate Subcommittees Finalize Rosters

With the 104th Congress well underway, House and Senate subcommittee assignments have been finalized. While legislation of interest to the Judiciary can be channeled through a number of different subcommittees, the most common are the House and Senate judiciary and appropriations subcommittees. The following are the rosters of those key subcommittees.

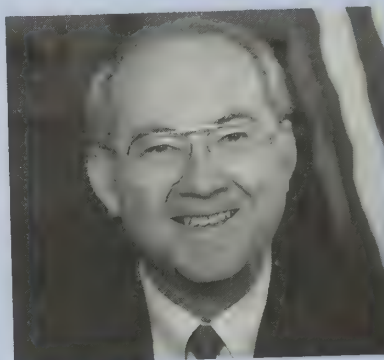
Senate Appropriations Committee, Subcommittee on Commerce, Justice, State, Judiciary

Republicans

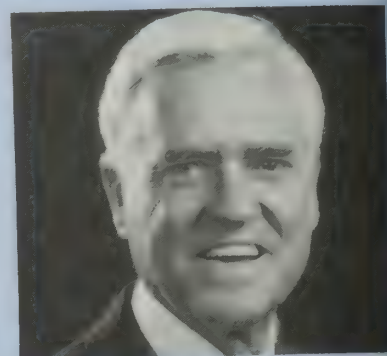
Phil Gramm (Tex.), chairman
Mark Hatfield (Or.)
Ted Stevens (Alaska)
Pete V. Domenici (N.M.)
Mitch McConnell (Ky.)
Judd Gregg (N.H.)

Democrats

Ernest F. Hollings (S.C.), ranking
Daniel K. Inouye (Hawaii)
Dale Bumpers (Ark.)
Frank R. Lautenberg (N.J.)
Bob Kerrey (Neb.)



Senator Phil Gramm



Senator Ernest F. Hollings

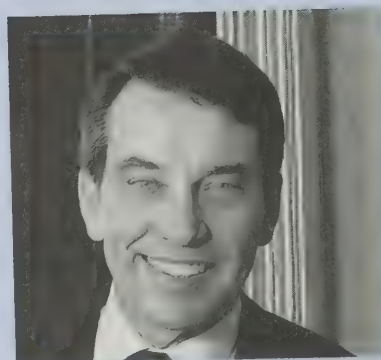
Senate Judiciary Committee, Subcommittee on Courts and Administrative Practices

Republicans

Charles E. Grassley (Iowa), chairman
Strom Thurmond (S.C.)
Hank Brown (Colo.)
Mike DeWine (Ohio)

Democrats

Howell T. Heflin (Ala.), ranking
Herb Kohl (Wis.)
Russell D. Feingold (Wis.)



Senator Charles E. Grassley



Senator Howell T. Heflin

Bold= a member new to the subcommittee

Italic and bold=a new member of Congress

FEBRUARY

27-March 2 Monday-Thursday
Workshop for Bankruptcy Judges

MARCH

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 27 Number 2 February 1995

14-15 Tuesday-Wednesday
Judicial Conference of the United States

30-31 Thursday-Friday
Advisory Committee on Bankruptcy Rules

VACANCY ANNOUNCEMENTS THE THIRD BRANCH

Vol. 27 Number 2 February 1995

FEDERAL PUBLIC DEFENDER, Western District of Tennessee

Applications are being accepted for a Federal Public Defender Position in Memphis. Appointment is for 4-year term. Salary: 95 percent of the salary of the U.S. attorney or the same as the salary of the highest paid assistant U.S. attorney for the district, currently \$109,915. Full public notice with qualification standards is posted in the office of the clerk of the United States Court of Appeals for the Sixth Circuit and the offices of the clerk of the United States District Court for the Western District of Tennessee. For further information and application forms, contact the Office of the Circuit Executive, U.S. Court of Appeals for the Sixth Circuit, 503 Potter Stewart United States Courthouse, Cincinnati, Ohio 45202-3988, (513) 684-3161. Deadline for receipt of applications is **Friday, March 31, 1995**.

ASSISTANT CIRCUIT EXECUTIVE, D.C. Circuit

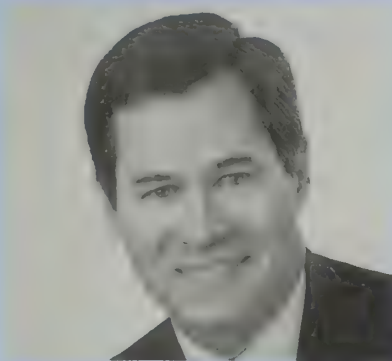
The Assistant Circuit Executive for Administration (JSP-14) is the lead policy analyst in the Circuit Executive's Office responsible for policy development, publications and public information, financial management, research and statistical analysis, and other key circuit functions. Applicants must have at least six years of progressively responsible administrative experience, including at least three years in positions with major responsibility for policy and fiscal analysis and policy development. An advanced degree in management, public administration, law, or in a related field is desired. Excellent writing skills a must. Knowledge of the federal court system and strong analytical and interpersonal skills desired. To apply, send resume to Circuit Executive, U.S. Courts for the District of Columbia Circuit, 4826 U.S. Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001. **Open until filled.**

**House Appropriations Committee,
Subcommittee on Commerce, Justice, State and Judiciary**



Representative Harold Rogers

- Republicans**
 Harold Rogers (Ky.), chairman
 Jim Kolbe (Ariz.)
 Charles H. Taylor (N.C.)
 Ralph Regula (Ohio)
 Michael P. Forbes (N.Y.)



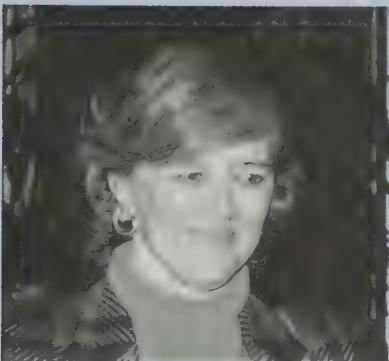
Representative Alan B. Mollohan

- Democrats**
 Alan B. Mollohan (W. Va.), ranking
 David E. Skaggs (Colo.)
 Julian C. Dixon (Cal.)

**House Judiciary Committee,
Subcommittee on Courts and
Intellectual Property**



Representative Carlos J. Moorhead

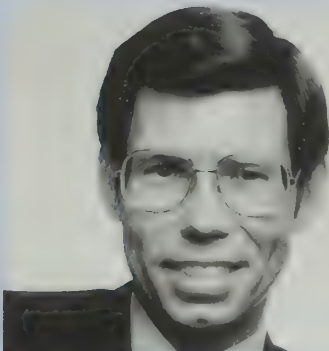


Representative Patricia Schroeder

**House Judiciary Committee,
Subcommittee on Crime**

- Republicans**
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 Steven H. Schiff (N.M.)
 Steve Buyer (Ind.)
 Howard Coble (N.C.)
 Fred Heineman (N.C.)
 Ed Bryant (Tenn.)
 Steve Chabot (Ohio)
 Bob Barr (Ga.)

- Democrats**
 Charles E. Schumer (N.Y.), ranking
 Robert C. Scott (Va.)
 Zoe Lofgren (Cal.)
 Sheila Jackson-Lee (Tex.)
 Melvin Watt (N.C.)



Representative Bill McCollum



Representative Charles E. Schumer

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 Howard Coble (N.C.)
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 Sonny Bono (Cal.)
 George W. Gekas (Pa.)
 Elton Gallegly (Cal.)
 Charles T. Canady (Fla.)
 Martin R. Hoke (Ohio)

- Democrats**
 Patricia Schroeder (Col.), ranking
 John Conyers Jr. (Mich.)
 Barney Frank (Mass.)
 Howard L. Berman (Cal.)
 Rick Boucher (Va.)
 Jerrold Nadler (N.Y.)

JUDICIAL MILESTONES

Appointed: Vicki Miles-LaGrange, as U.S. District Judge, U.S. District Court for the Western District of Oklahoma, November 28.

Appointed: Richard P. Mesa, as U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, January 6.

Appointed: Kenneth P. Neiman, as U.S. Magistrate Judge, U.S. District Court for the District of Massachusetts, January 5.

Appointed: James Robertson, as U.S. District Judge, U.S. District Court for the District of Columbia, December 31.

Appointed: Shira Ann Scheindlin, as U.S. District Judge, U.S. District Court for the Southern District of New York, November 14.

Appointed: Ross A. Walters, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Iowa, November 14.

Elevated: Judge Jerry Buchmeyer, to Chief Judge, U.S. District Court for the Northern Texas, succeeding Chief Judge Barefoot Sanders, January 1.

Elevated: Judge William G. Cambridge, to Chief Judge, U.S. District Court for the District of Nebraska, succeeding Chief Judge Lyle E. Strom, November 1.

Elevated: Judge Anne E. Thompson, to Chief Judge, U.S. District Court for the District of New Jersey, succeeding Chief Judge John F. Gerry, October 1.

Elevated: Judge Robert L. Vining Jr., to Chief Judge, U.S. District

Court for the Northern District of Georgia, succeeding Chief Judge William C. O'Kelley, January 1.

Senior Status: Chief Judge Juan G. Burciaga, U.S. District Court for the District of New Mexico, November 9.

Senior Status: Judge Maurice B. Cohill Jr., U.S. District Court for the Western District of Pennsylvania, November 28.

Senior Status: Judge Bruce Jenkins, U.S. District Court for the District of Utah, September 30.

Senior Status: Judge Dorothy W. Nelson, U.S. Court of Appeals for the Ninth Circuit, January 1.

Senior Status: Chief Judge Lee R. West, U.S. District Court for the Western District of Oklahoma, November 26.

Retired: Magistrate Judge Floyd E. Boline, U.S. District court for the District of Minnesota, November 16.

Retired: Magistrate Judge Kent Sandidge III, U.S. District Court for the Middle District of Tennessee, January 2.

Retired: Chief Bankruptcy Judge George S. Wright, U.S. Bankruptcy Court for the Northern District of Alabama, December 31.

Deceased: Senior Judge Hubert I. Teitelbaum, U.S. District Court for the Western District of Pennsylvania, January 5.

Deceased: Senior Judge Charles H. Tenney, U.S. District Court for the Southern District of New York, November 11.

THE THIRD BRANCH

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Please direct all inquiries and address changes to The Third Branch at the above address.

JUDICIAL BOXSCORE

As of February 1, 1995

Courts of Appeals	
Vacancies	16
Nominees	3
District Courts	
Vacancies	53
Nominees	10
Court of International Trade	
Vacancies	2
Nominees	0
Courts with "Judicial Emergencies"	24

Draft Judgeship Bill Transmitted to Congress

Last month, the director of the Administrative Office, as secretary of the Judicial Conference, transmitted to the leadership of Congress the Federal Judgeship Act of 1995, a draft bill to authorize 43 additional judgeships. The bill would add 20 temporary judgeships in the courts of appeals and 18 permanent and 5 temporary judgeships in the district courts.

The bill redefines when a temporary judgeship, which has been vacated, may be filled. Previously, in courts with temporary judgeships, the first judgeship vacancy occurring five years after enactment of the judgeship bill would not be filled. The 1995 judgeship bill would change this with the following draft language.

Circuit Temporary Judgeships
"Six years after the *confirmation date* of the first judge named to fill a temporary judgeship created in the circuit by this act, vacancies in the judicial circuits named in this section shall be filled only when the number of active judges on the circuit falls below the number of judgeships authorized for the circuit."

District Temporary Judgeships
"The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring five years or more after the *confirmation date* of the judge named to fill a temporary judgeship created in the district by this act, shall not be filled."

[The draft bill also would amend the temporary judgeship language of the 1990 judgeship bill in an identical manner.]

The Judicial Conference recommends new judgeships based upon the findings of a biennial judgeship

survey. The final determination takes into consideration the requests of individual courts and the recommendations of the judicial councils, with review by the Committee on Judicial Resources and its Subcommittee on Judicial Statistics, and the Judicial Conference. The additional judgeships of the Federal Judgeship

Act of 1995 were approved by the Conference at its September 1993 and September 1994 meetings. It is not anticipated that Congress will consider a judgeship bill in the near future, although that strategy may change as the 1996 election approaches.

How To Obtain Congressional Documents

Congressional bills, reports, and public laws are available free. However, the number of copies that may be obtained at one time is limited.

For information on the status and availability of Senate legislative documents, call the Senate Document room at (202) 224-7860. Phone orders cannot be accepted.

For single copies of Senate bills, reports and public laws, and conference reports write:

Senate Document Room
B-04 Hart Bldg.
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There is a limit of six different items per request. Multiple copies of one item are not available. Only one request per day will be filled.

House

For information on the status and availability of House legislative documents, including bills, reports, public laws, and conference reports contact:

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The House will accept phone orders for documents. Call the House Document Room at (202) 225-3456. Up to six different items may be re-

quested in person. Up to 12 items may be requested by mail and six items by telephone. Multiple copies of one item are not available.

Hearings & Prints

For information on congressional hearings and prints call the Government Printing Office at (202) 512-1808.

If you are mailing a request for hearing documents and prints, send your request to

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Senate Judiciary Committee hearings and prints are available free of charge from the committee while supplies last. Documents may be requested by mail and addressed to:

Senate Judiciary Committee,
Document Clerk
SD-224 Dirksen Bldg,
Washington, D.C. 20510

Judge Patrick E. Higginbotham: Rules Changes Under Review

Judge Patrick E. Higginbotham sits on the U.S. Court of Appeals for the Fifth Circuit. He is chairman of the Judicial Conference's Advisory Committee on Civil Rules.

Q: What has been the reaction to the amendments made in 1993 to the Civil Rules?

A: In general, the response has been positive. Practitioners appear to like the changes to Rule 11, and its satellite litigation appears to have slackened. We will continue to monitor the effect of the changes and instances of abuse. Most of the other changes in that package of amendments validated the practices of most courts.

Q: What about the amendments dealing with disclosure procedures under Rule 26?

A: The changes to Rule 26 continue to be controversial, in part because they are perceived as adding to a growing balkanization of the federal rules. Attorneys complain that they must now search through federal rules, local rules, CJRA plans, and standing orders before filing a law suit in a district court. Of course, many of the differences in discovery practices arise from experimentation mandated under the Civil Justice Reform Act. The amendments to Rule 26 accommodate the act and authorize such experimentation.

Although the amendments to Rule 26 permit courts to adopt different discovery approaches, they do provide the courts with a model that has, in fact, been adopted by many courts. And in that sense, the amended rule works to achieve

greater uniformity so that rather than 94 distinct discovery plans, we have only a handful. When the evaluation of the CJRA plans is completed, we will revisit the rule. Perhaps then we will be able to fashion a rule that is more uniform and more in line with traditional federal rules.

that 6-person juries are unquestionably less likely than 12-person juries to include minority representation. A 12-person jury can better reflect community attitudes and experiences. Other commentators also have shown that 6-person juries have produced inferior deliberation and more

"After all, the statutory rulemaking process is a shared endeavor of distinct branches of government, recognizing and according to each a proper role."

Q: Could you tell us about any changes that are under consideration?

A: A proposed amendment to Rule 5, authorizing local court rules to permit electronic filing was published for public comment. We are now considering the comments. The committee also has proposed that amendments to Rules 47 and 48, dealing with jury size and voir dire be published for public comment.

A lot has been written about the Judicial Conference decision in 1971 to reduce juries from 12 to 6 persons in civil cases. Virtually all scholarly writings on this subject have criticized 6-person juries. In an insightful article in the *Hofstra Law Review*, Chief Judge Richard S. Arnold (8th Cir.) forcefully argues for a return to the 12-person jury.

Arnold highlights the historical reasons embedded in common law for 12-person juries and identifies the most glaring defect of 6-person juries. Statistical analyses and real life experiences have demonstrated

inconsistent jury decisions.

The committee found these reasons compelling and proposed amendments to Rule 48 to require 12-person juries with no alternates. It believes that the added cost incurred in providing 12-person juries is not large. Regardless, it is a small price to pay for maintaining the integrity of the administration of justice. It is a return to one of our oldest traditions—one that works.

At its January 1995 meeting, the Standing Rules Committee approved publication of the proposed amendments to Rule 48 for public comment in Fall 1995.

Q: What is the change proposed to voir dire procedures?

A: For some time now, the bar and members of Congress have strongly advocated a direct role for the lawyer during voir dire. The committee has carefully considered the opposition of some judges to any questioning by attorneys. The committee shares their

opposition to voir dire as practiced in some state systems. We are persuaded that the proposed rule fairly accommodates competing interests and will not allow forensic games.

The Supreme Court decisions in *Batson* and *J.E.B. v. Alabama* changed the legal landscape by making it more difficult for attorneys to exercise peremptory challenges. As noted in *J.E.B.*, "Without an adequate foundation [laid by voir dire], counsel cannot exercise sensitive and intelligent peremptory challenges." And no one should understand the facts and nuances of a particular case better than the lawyers litigating it.

The proposed amendments to Rule 47 are written to ensure judicial control. Under the committee's draft, the lawyer is allowed to supplement the court's voir dire. With an adequate voir dire by the trial judge, these lawyers will seldom need to ask additional questions. Moreover, a judge's control of attorney questioning would be subject only to an abuse of discretion standard of review. Relatedly, a recent FJC study shows very little difference in the time spent on voir dire when the judge allows the attorney to supplement its questions. The study shows a steadily growing majority of courts now allowing some direct attorney questioning, and the proposed changes should not alter their existing practices.

The Standing Rules Committee will consider approving publication for comment amendments to Rule 47 at its July 1995 meeting simultaneously with expected similar proposed amendments to Criminal Rule 24. If approved, the proposed amendments would be published for public comment in early fall 1995.

Q: Do you have any concerns over direct Congressional involvement in the rulemaking process?

A: The federal rules are the legitimate concern of Congress and the courts. The procedures for notice, comment, meticulous drafting, and review that produce high quality rule amendments as contemplated by the Rules Enabling Act have usually persuaded Congress to resist direct amendment and to listen to the judges and lawyers who work daily with the real world of the rules. We, in turn, must listen and consider.




For example, a bill was introduced last Congress that would have required a judge to find that public safety was not affected in every case involving a request for a discovery protective order. A scheduled markup of the bill was delayed at our request. We have now drafted an alternative that was approved by the Standing Rules Committee. It sets forth clear criteria for the judge when considering requests to dissolve a protective order, rather than needlessly requiring intensive review up front in all cases.

By allowing the rulemaking process to go forward on this proposal, all persons that may be affected by the amendment will have an opportunity for comment. So that when

Congress does review it, they will have the benefit of a thorough and extensive study. We think Congress will be persuaded that we captured its concerns in a workable rule.

Q: What challenges do you see the Judiciary facing regarding the rulemaking process?

A: The 1988 amendments to the Rules Enabling Act opened up what had previously been a semi-private process. Under the new procedures, proposed amendments are subjected to greater public scrutiny, often producing better rules. On the down side, the process is more vulnerable to mischief by self-interest groups, who have no reluctance in importuning Congress for direct action if they are otherwise not satisfied by the rulemaking process.

Reacting to these end runs to Congress for direct rulemaking presents a constant challenge. No single response can handle all the different attempts at direct legislative rulemaking. But it is essential that we not insulate ourselves from the bar and the public. Instead, we should and will continue to reach out to the academic, the lawyer, and congressman. After all, the statutory rulemaking process is a shared endeavor of distinct branches of government, recognizing and according to each a proper role. The bar and public are key participants in this enterprise. I have found that this committee is blessed with outstanding judges and lawyers, evidenced in part by their willingness to seek counsel and listen, and its sense that wise rulemaking is often a refusal to make new rules or amend old ones. 

Attorney General Reno Meets With Executive Committee



Recently, members of the Judicial Conference's Executive Committee gathered for one of their periodic meetings with Attorney General Janet Reno to discuss issues of mutual concern. Seated, left to right, are AO Director L. Ralph Mecham, Judge Charles L. Brieant (S.D. N.Y.), Attorney General Reno, Executive Committee Chairman Chief Judge Gilbert S. Merritt (6th Cir.), Judge William T. Hodges (M.D. Fla.), Chief Judge Morey L. Sear (E. D. La.), and Chief Judge Sam J. Ervin, III (4th Cir.). The two remaining members of the committee, Chief Judge Richard S. Arnold (8th Cir.) and Chief Judge J. Clifford Wallace (9th Cir.), are not pictured.

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Report Reflects Judiciary's 1994 Caseload

The overall caseload of the federal court system remains high, although following a period of continuous growth, some types of case filings declined slightly in fiscal year 1994, according to the 1994 *Judicial Business of the U.S. Courts: Report of the Director*. Shifting priorities and staff vacancies in executive branch agencies are among the factors that contributed to the decline in case filings in FY 94.

There were drops in the number of appeals, criminal, and bankruptcy cases filed in 1994. The number of civil case filings increased, as did the number of cases that were referred to arbitration. The federal probation system continued to experience growth as the number of persons under supervision reached an all-time high.

The following is a summary of the FY 94 workload of the federal courts.

Appeals

The number of appeals fell 4 percent from 50,224 in 1993 to 48,322 in 1994, the first decline in the total number of appeals filed in the 12 regional courts of appeals since 1978. Even so, the number of appeals filed

in FY 94 was still higher than in 1992 when appeals were 47,013. In 1994, case terminations reached an all-time high, exceeding case filings for the first time since 1982.

The largest percentage decrease in 1994 was in the category of administrative agency appeals, which were down 14 percent. The declines were largely because of fewer appeals involving the Federal Communications Commission, Immigration and Naturalization Service, Internal Revenue Service, and the National Labor Relations Board.

Of appeals arising from U.S. district courts, criminal appeals experienced the greatest drop in 1994, falling 10 percent. The large number of district court judicial vacancies contributed to a decline in criminal trials completed in district courts, which in turn led to a drop in criminal appeals. Only prisoner petition appeals increased in 1994, up 2 percent.

District Courts Civil Cases

Civil filings rose in 1994—up 3 percent from 1993 and 8 percent above 1990. Contributing to the over-

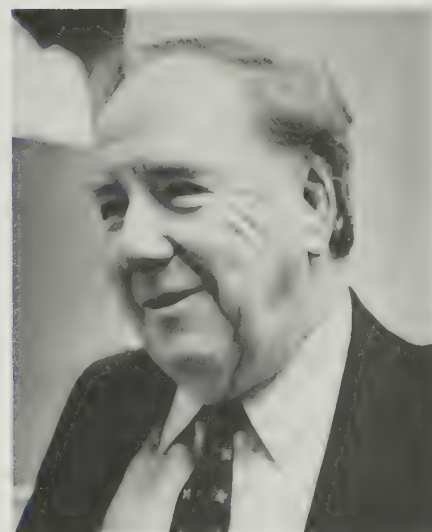
See *Caseload* on page 2

Newsletter
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March 1995



Moorhead Sets Subcommittee Agenda



Representative Carlos J. Moorhead

Congressman Carlos J. Moorhead (R-Calif.) is the chairman of the House Judiciary's Subcommittee on Intellectual Property and Judicial Administration. A former state legislator, Moorhead has represented northern Los Angeles County for 12 terms.

Q: After 13 years as the ranking member on the House subcommittee with oversight responsibility for the federal courts, you now have taken over as the chair. What are some of the changes in style, approach, and issues we are likely to see when

See *Interview* on page 10

INSIDE

Sentencing Commission Issues "Crack Report" 4
Conference Seeks Rules Delay 5
Judiciary Explores Internet 9

Caseload continued from page 1

all jump was an 18 percent increase in civil rights actions, an 11 percent increase in personal injury suits, and an 8 percent increase in prisoner petitions.

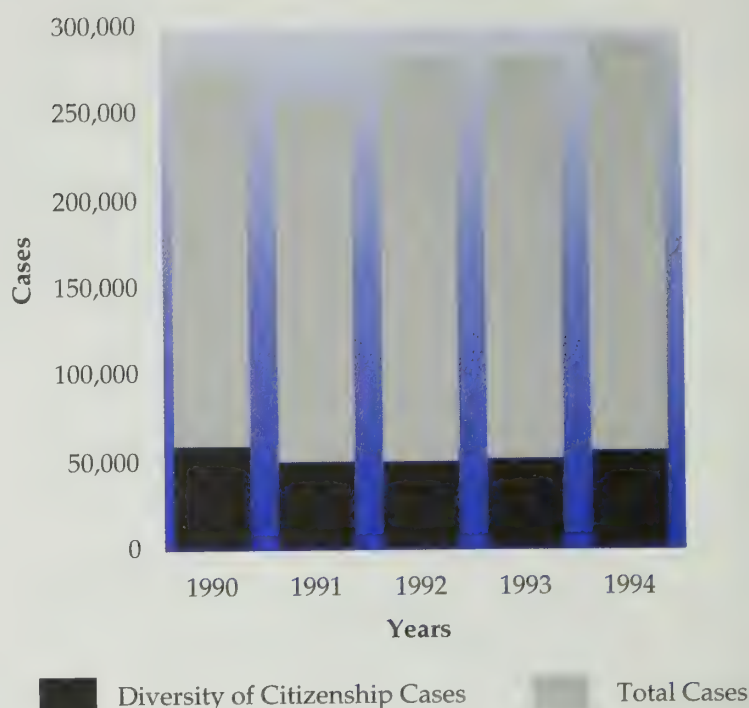
In private cases, federal question litigation increased for the third consecutive year, rising 8 percent to 135,853. Personal injury/product liability cases rose 18 percent, and state prisoner petitions were up 12 percent, most of which were concentrated in civil rights suits. For the third year in a row, diversity cases rose, increasing 7 percent to 54,886. Most of the increase came from personal injury/product liability filings, which rose 17 percent.

Criminal Cases

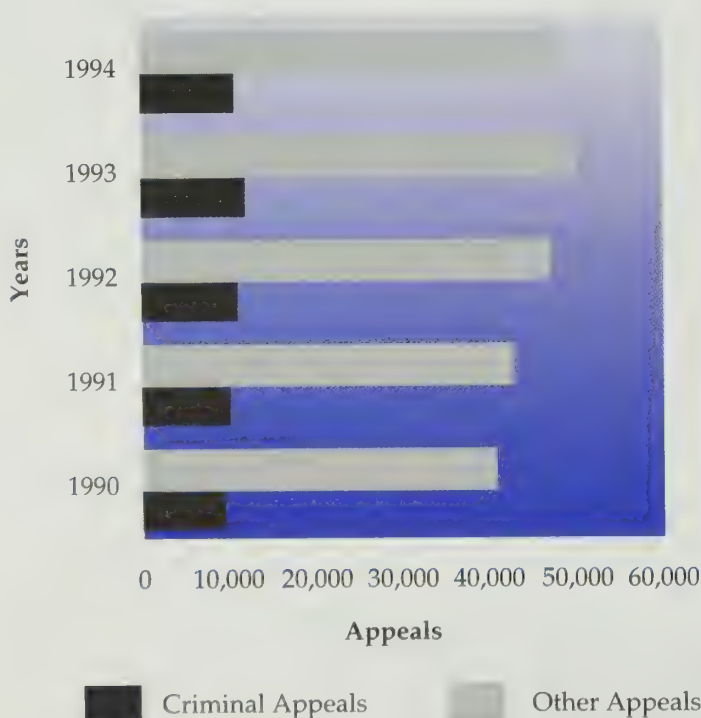
For the second consecutive year, criminal case filings dropped, down 3 percent. The decrease in criminal filings was offset in part by a 14 percent increase in drunk driving and traffic violation cases. The primary

cause of the decline was a drop in the number of drug cases, which are typically a large percentage of the

Civil Cases Filed (Fiscal years 1990–1994)



Appeals Filed (Fiscal years 1990–1994)



criminal caseload. The smaller caseload reflects Department of Justice policies that either de-emphasize prosecutions of small-scale offenders or that have been affected by staff shortages and administrative changes arising from the transitions to new U.S. attorneys. In 1994, prosecutions of drug cases in federal courts declined 7 percent, which follows a 5 percent drop in 1993.

Decreases were seen in other categories of cases where there had been significant growth in past years. Weapons and firearms filings fell 14 percent and, despite increased prosecution of individuals involved in the savings and loan scandals, case filings for lending institution fraud fell 9 percent. Filings of income tax fraud cases dropped 8 percent. The prosecution of immigration law violations increased 4 percent in 1994; in 1993, prosecutions rose 19 percent.

Persons Under Supervision

The number of persons under supervision increased 3 percent to ↗

89,103 in 1994, continuing an upward trend that began in 1992. The overall rise is due to the 27 percent increase in persons serving terms of supervised release. Provisions of the Sentencing Reform Act of 1984, while abolishing parole, established sentencing guidelines by which prisoners who have completed their full prison sentence must enter a term of supervised release in the community. As more defendants are sentenced under the guidelines, the number of persons under supervision also will grow, even as the number of persons sentenced prior to the guidelines and still eligible for parole will decrease.

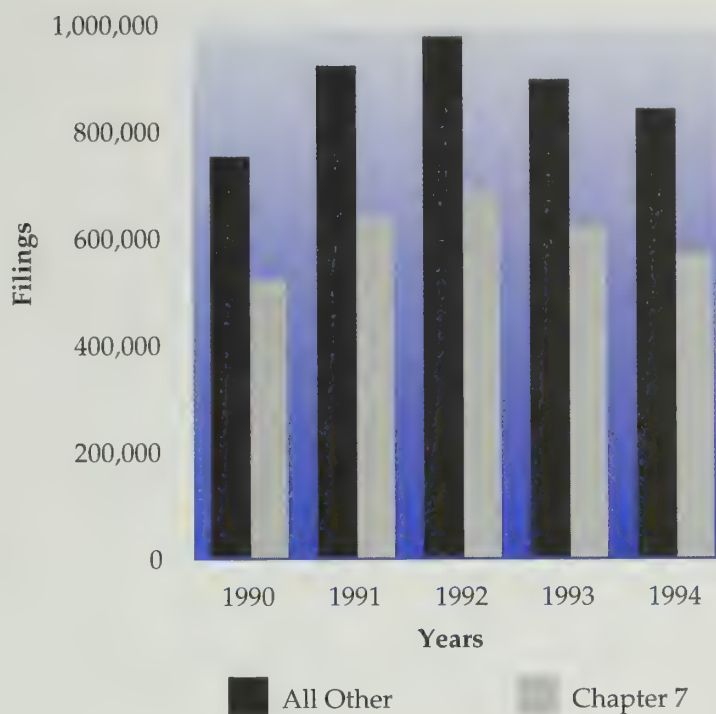
In addition, the substance abuse treatment services provided to federal offenders continued to rise as the number of drug dependent clients increased 5 percent 1994 to 21,854. Though less than the 9 percent growth in 1993, this figure has increased nearly every year since 1981.

Bankruptcy

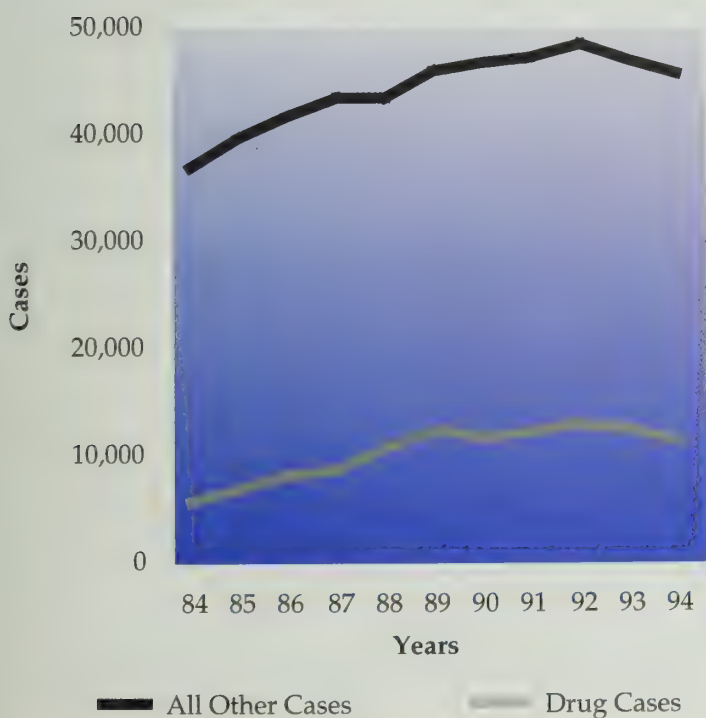
Bankruptcy filings, which prior to

1993 had increased for eight consecutive years, fell almost 7 percent to 837,797 in 1994. Both non-business and business filings declined, with a

Bankruptcy Filings (Fiscal years 1990–1994)



Criminal Cases Filed (Fiscal years 1990–1994)



drop of 5.8 percent and 16 percent, respectively. Non-business cases accounted for 783,372 of the total of 837,797 bankruptcy cases.

As in 1993, bankruptcy filings in 1994 also decreased under each chapter of the Bankruptcy Code. Chapter 7 cases, totaling 571,971, fell 7.9 percent. The next largest chapter, Chapter 13, fell from 254,667 in 1993 to 248,942 in 1994, a 2.2 percent drop. Filings under Chapter 12, which was enacted in 1986 to help farmers reorganize their debts, showed the greatest percentage decline at 31 percent. Nevertheless, the total number of bankruptcy petitions filed in FY 94 was more than twice the amount in FY 84. In addition, there are 1,120,850 bankruptcy cases pending as of September 30, 1994, a drop of 2.8 percent from the corresponding period in 1993.

For further information, please contact the Statistics Division of the Administrative Office of the U.S. Courts at (202) 273-2990.

Sentencing Commission Report Finds Disparity in Cocaine Sentencing

The discrepancy between the federal court penalty for crack cocaine offenses and powder cocaine offenses is too great, concludes a special report issued last month by the U.S. Sentencing Commission.

The federal criminal code currently provides for a five-year mandatory minimum sentence for first-time offenders trafficking in 5 grams or more of crack cocaine or 500 grams or more of powder cocaine, and a ten-year mandatory minimum sentence for first-time offenders trafficking in 50 grams or more of crack cocaine and 5,000 grams or more of powder cocaine. The commission proposes that the guidelines system be revised by amending the current new sentencing scheme to address concerns of Congress regarding the punishment of these offenses.

"The Sentencing Commission shares congressional and public concern about the harms associated with crack cocaine—both to users and to the society as a whole—including the violence associated with its distribution, its use by juveniles, the involvement of women and juveniles in distribution, and its addictive potential," said the commission's report. "However, the Sentencing Commission concludes that Congress's objectives with regard to punishing crack cocaine trafficking can be achieved more effectively without relying on the current federal sentencing scheme for crack cocaine offenses that includes the 100 to 1 quantity ratio."

One of the impacts of this discrepancy is that low-level (retail) crack cocaine dealers potentially can be punished far more severely than their high-level (wholesale) suppliers of powder cocaine, from which crack is converted, said the report. In 1993, the mean sentence for crack possession was 30.6 months and the mean sentence for powder was 3.2 months.

The median sentence for crack was 9.5 months, while the median sentence for powder was zero, indicating that defendants in 73.8 percent of the powder possession cases received probation with no prison term, while only 32 percent of the defendants in crack possession cases received probation. (See chart.)

The commission suggests that refinement of the existing Sentencing Guidelines may be a more equitable way in which to establish the proper penalties for crack and powder cocaine offenses. Such action could take place in the course of the commission's normal 1995-96 amendment cycle. As a result, the commission recommends that Congress revisit the 100 to 1 quantity ratio and the penalty structure that

provides for a mandatory five-year sentence for simple possession of crack but a statutory maximum penalty of one year for simple possession of any other drug.

The Omnibus Violent Crime Control and Law Enforcement Act of 1994 directed the commission to study federal sentencing policy relating to the possession and distribution of cocaine. The report, entitled *Cocaine and Federal Sentencing Policy*, was transmitted to Congress by the commission. Copies can be obtained by contacting the U.S. Sentencing Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Suite 2-500, Washington, DC 2002-8002 or by calling (202) 273-4590.

Sentence Imposed For Defendants Convicted Of Simple Possession*
(October 1, 1992 through September 30, 1993)

Drug Type	Total No. of Defendants	Mean Sentence (In Months)	Median Sentence (In Months)
Total	892	6.3	3.0
Powder Cocaine	122	3.2	0.0
Crack Cocaine	98	30.6	9.5
Heroin	37	6.8	5.0
Marijuana	601	3.2	3.0
Methamphetamine	34	2.4	0.0

* Of the 42,107 defendants sentenced under the guidelines, there were 961 cases in which the primary offense of conviction was simple possession of drugs. Of these 961 cases, 90 cases were excluded due to one or more of the following reasons: other drug type or missing information on sentence imposed.

Median is the point at which half the cases fall above and half fall below.
Mean is the mathematical average.

Judicial Conference Asks Congress to Delay Rules Implementation

The Judicial Conference has asked Congress to reconsider the addition of three new rules to the Federal Rules of Evidence as contained in last year's crime bill, P.L. 103-322. The rules' implementation was delayed to allow for the Conference's review and recommendations.

New Evidence Rules 413, 414, and 415 would admit evidence of a defendant's prior sexual assault or child molestation acts in civil or criminal cases involving sexual assault or child molestation. By forwarding its views with its alternative recommendations to Congress on February 9, 1995, the Conference automatically delayed the implementation of the new Rules 413-415. They will now take effect 150 days after transmittal of the report, unless Con-

gress adopts the Conference's recommendations or provides otherwise by law.

The Conference, through its Advisory Committee on Evidence Rules, conducted an expedited but thorough review of the new rules. This review included a solicitation of public comment from all federal judges, approximately 900 evidence law professors, 40 women's rights organizations, and 1,000 other individuals and interested organizations.

The Advisory Committee on Evidence Rules submitted a report to the Conference Committee on Rules of Practice and Procedure (Standing Committee). The report concluded that the new rules were unnecessary and could diminish significantly the

protections that safeguard persons accused in criminal cases and parties in civil cases from undue prejudice. The committee was concerned that the new rules would lead to more convictions based on past—as opposed to charged—behavior, particularly if the admission of such evidence was mandatory. Many public commentators had asserted that the Rule 403 balancing test was eliminated under the new rules, apparently depriving a judge of any discretion in deciding whether to exclude such evidence. The committee also noted that rebutting evidence of prior bad acts would lead to “trials within trials.”

The Advisory Committees on Criminal Rules and Civil Rules

See Rules on page 6

AO Taps New Assistant Director for Congressional and External Affairs

Michael W. Blommer has been named Assistant Director for Congressional, External and Public Affairs at the Administrative Office. For the past 16 years Blommer has served as the Executive Director for the American Intellectual Property Law Association (AIPLA).

In his new position Blommer will develop, present, and promote legislative initiatives approved by the Judicial Conference. Blommer and his staff also will identify and monitor relevant congressional activity; prepare and coordinate testimony and comments on proposed legislation; and coordinate issues and activities affecting the federal Judiciary with bar associations, legal institutions, state court leaders, other relevant legal groups, the public, and the media.

“Mike Blommer brings a unique set of talents to this important and



Michael W. Blommer

challenging job,” said AO Director L. Ralph Meham. “He will join an already experienced and effective team in working on some of the most significant issues facing the federal Judiciary today. A key member of that team has been Art White,

who has served with distinction as the acting assistant director during a highly demanding time. He will continue as Mike Blommer's deputy.”

During his tenure with the AIPLA Blommer and his association have been influential advocates on several key legislative issues of importance to the Judiciary. Prior to joining AIPLA Blommer served for seven years as a counsel to the Select Committee on Crime of the House of Representatives, as a counsel to the House Judiciary Committee, and as administrative assistant to former Representative Charles E. Wiggins. Prior to his congressional service, Blommer was a trial attorney in the Criminal Division of the U.S. Department of Justice.

Blommer will join the AO on March 21, 1995.

Expansion of Bankruptcy Noticing Center Continues

The number of bankruptcy courts using the mailing services of the Bankruptcy Noticing Center (BNC) is expected to nearly triple in fiscal year 1995, according to a survey conducted last month, as twenty-seven more bankruptcy courts opt to use the BNC. They follow the 15 bankruptcy courts and the Southern District of Florida, which already have made a successful transition from the Bankruptcy Automated Noticing Systems (BANS) to the BNC. Unlike the BANS, the BNC provides a centralized location that takes advantage of postal discounts for large volume mailing and zip code sorting, while allowing custom-generated forms. The 27 new courts indicated they would make the changeover in a survey mailed last month to determine interest in the BNC among bankruptcy courts.

According to Glen Palman, chief of the Administrative Office's Bankruptcy Court Administration Division (BCAD), about 1.7 million bankruptcy notices per month, or approximately 40 percent of the bankruptcy notices generated nationwide, are now processed

through the BNC. "Based on nationwide BNC implementation," said Palman, "estimates indicate the BNC has the potential to save the Judiciary approximately \$7 million dollars over four years when compared to court-based noticing."

In consultation with court personnel comprising a Noticing Users Group, this month a FY 95 expansion schedule will be issued based on the results of the survey. Early in FY 96, an updated BNC expansion package will be mailed to the remaining non-BNC bankruptcy courts in order to complete nationwide BNC expansion.

The AO's Staffing Requirements and Analysis Branch, in conjunction with BCAD, is nearing completion of a study to develop new staffing factors for bankruptcy clerks' offices based on the work impact of the BNC. A task force of court personnel (primarily the Noticing Users Group) and AO staff have been conducting court visits to measure all functions in the bankruptcy court clerks' offices affected by the BNC. Preliminary findings developed from visits to five large courts indi-

cate approximately 50 noticing positions nationwide could be saved due to BNC implementation based on 100 percent of the staffing formula. In addition, work savings in other areas may be discovered. A final noticing factor for the bankruptcy courts will be presented to the Judicial Resources Committee in June 1995, and if approved, presented to the Judicial Conference in September 1995.

After a court converts its noticing work to the BNC, the AO will adjust the court's allocations for staff (if a new staffing factor is implemented) and postage. These funds will then be transferred to pay the BNC contractor. Should a court decide not to use the BNC for its noticing, it will receive reduced noticing-related allotments.

For more information on the Bankruptcy Noticing Program, call James (Robby) Robinson, the BCAD project manager, at (202) 273-1547, or Karen Eddy, chair of the Noticing Users Group, clerk of court, Bankruptcy Court for the Southern District of Florida at (305) 536-4320.

Rules continued from page 5
agreed with the Advisory Committee on Evidence Rules's report and opposed the new rules. The Standing Committee approved the report of the Advisory Committee on Evidence Rules. The Judicial Conference unanimously agreed by mail ballot and recommended that Congress reconsider its decision. If Congress chooses not to alter its decision, alternative amendments incorporating the provisions of new Rules 413-415 as amendments to Rules 404 and 405 were proposed. The alternative

amendments would eliminate ambiguities and possible constitutional infirmities contained in the new rules 413, 414, and 415. The alternative amendments would:

- expressly apply the other rules of evidence to evidence offered under the new rules;
- expressly allow the party against whom such evidence is offered to use similar evidence in rebuttal;
- expressly enumerate the factors to be weighed by a court in making its Rule 403 determination;

■ render the notice provisions consistent with the provisions in existing Rule 404 regarding criminal cases;

■ eliminate the special notice provisions of Rules 413-415 in civil cases so that notice will be required as provided in the Federal Rules of Civil Procedure; and

■ permit reputation or opinion evidence after such evidence is offered by the accused or defendant.

Copies of the report may be obtained from the AO Rules Committee Support Office at (202) 273-1820.

MARCH

14-15 Tuesday-Wednesday
Judicial Conference of the United States

29-31 Wednesday-Friday
Prisoner Pro Se Litigation Workshop

30-31 Thursday-Friday
Advisory Committee on Bankruptcy Rules

APRIL

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 27 Number 3 March 1995

2-5 Sunday-Wednesday
Third Circuit Conference

10-11 Monday-Tuesday
Advisory Committee on Criminal Rules

17-18 Monday-Tuesday
Advisory Committee on Appellate Rules

18-19 Tuesday-Wednesday
Committee on International Judicial Relations

19-21 Wednesday-Friday
Conference of Chief District Judges

20-22 Thursday-Saturday
Advisory Committee on Civil Rules

VACANCY ANNOUNCEMENTS THE THIRD BRANCH

Vol. 27 Number 3 March 1995

PROJECT COORDINATOR, Tenth Circuit

The U.S. Courts for the Tenth Circuit are seeking a Project Coordinator to provide staff support to the circuit's Gender Bias Task Force in developing gender fairness programs impacting all participants in the judicial process. Under the general direction of the task force and the circuit executive, the project coordinator will plan and coordinate all aspects of the project, including general administration, gathering and analyzing data, scheduling and conducting meetings and hearings, and preparing reports and recommendations. Requirements include a degree in a social science field or comparable program involving research methodology; excellent writing, organizational, interviewing, and analytical skills; maturity and discretion; a minimum of three years experience conducting research projects; and an additional three years managing such projects, ideally in a court or legal environment. Law degree helpful if combined with social science research skills. Some travel. Temporary position in Denver for up to two years. Salary range: \$51,688-\$79,402, depending on education, experience, and previous salary. To apply, submit letter and resume by **May 5, 1995**, to Robert L. Hoecker, Circuit Executive, 1823 Stout Street, Denver, CO 80257.

CHIEF DEPUTY CLERK, Northern District of California

The U.S. Bankruptcy Court for the Northern District of California seeks a person with in-depth bankruptcy management experience to be its Chief Deputy. This strategic position oversees approximately 20 managers and supervisors, and 108 line-staff employees in four office locations (Oakland, San Francisco, San Jose, and Santa Rosa). Applicants must have a minimum of six years of progressively responsible administrative experience, which have provided a comprehensive understanding of modern management techniques and systems. Applicants must have a demonstrated ability to supervise people. An extensive background in the judicial system is required, and substantial bankruptcy court operations management experience is preferred. The position is located in San Francisco, California, and has a salary range of \$86,170-\$112,020. To apply, send application letter and resume to Suzy Seamans, Personal Specialist, U.S. Bankruptcy Court, P.O. Box 7341, San Francisco, CA 94120-7341. Closing date for applications is **May 1, 1995**.

Foundation Celebrates Role of African Americans in Judiciary



A conference and dinner were held in Chicago in 1992 to celebrate the integration of the federal Judiciary, and 750 lawyers and judges attended. Among them were 52 of the 68 African American federal judges, both sitting and retired.

Less than three years ago, the first gathering of African American judges, lawyers, and other involved with the federal Judiciary took place in Chicago, Illinois. The unprecedented symposium and celebration was in commemoration of the integration of the federal bench and in honor of Judge James B. Parsons, the first African American Article III judge. That event grew into the Just the Beginning Foundation.

The foundation is an independent tax-exempt organization, with a mission to commemorate the contributions of African Americans to the federal Judiciary; to educate the public on the struggles and successes of African American lawyers and judges; and to provide financial support for students who exemplify the foundation's goals, and to lawyers whose public service demonstrates a personal commitment to utilizing their legal talents for the public good.

In 1993, in cooperation with the Chicago Chapter of the Federal Bar Association, the foundation awarded the first James Benton Parsons scholarship to a third-year law student. Six attorneys also were honored with Public Service Awards for their ex-

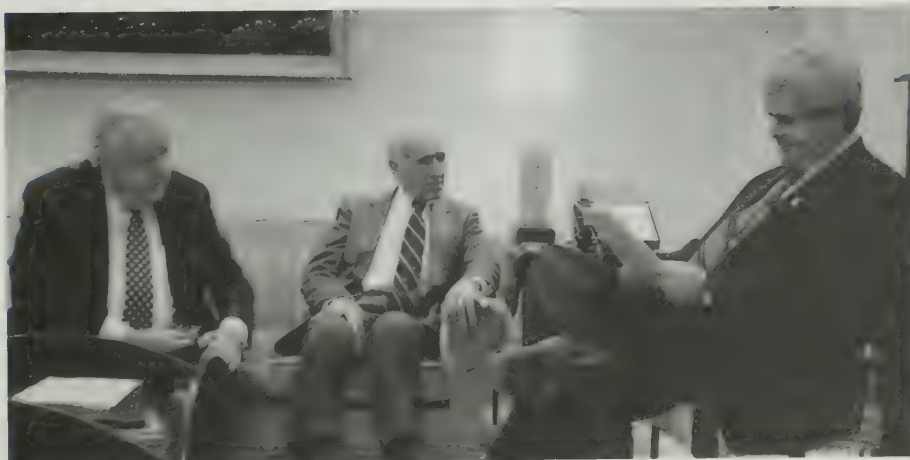
traordinary dedication and service to the African American and legal communities. In February 1995, the foundation, with the help of Arthur Andersen LLP Litigation Services Group, awarded three student scholarships, in honor of Judges James Benton Parsons, William Henry Hastie, and Constance Baker Motley.

The awarding of the scholarships also marked the opening of an exhibit entitled "From Slavery to the

Supreme Court: The African American Journey Through the Federal Courts." The exhibit, cosponsored by the foundation and the Chicago Public Library, features photographs, documents, and other memorabilia beginning with slavery and exploring the progress of African Americans as litigants, lawyers, and judges in the federal courts. The exhibit also highlights the careers of several African American federal judges in Illinois. One of the exhibit organizers, Judge Ann Claire Williams (N.D. Ill.), said, "The history of African Americans in the federal courts can be understood only when one knows the stories of the individual lawyers and judges and the context in which they struggled to participate in the federal courts. We wanted the general public, and especially children, to know and be inspired by these stories."

The foundation has begun planning the Second Just the Beginning Foundation Celebration and Symposium, which will be held in September 1996.

AO Director Meets with Speaker Gingrich



Administrative Office Director L. Ralph Mecham and Judge Anthony A. Alaimo (S.D. Ga.) met earlier this month with Speaker of the House Newt Gingrich (R-Ga.) to discuss issues of mutual interest, including the line-item veto legislation and its potential impact on funding for the federal Judiciary.

JUDICIAL MILESTONES

Appointed: Frank R. Alley III, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Oregon, January 20.

Appointed: Martin C. Ashman, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Illinois, January 31.

Appointed: Susan Paradise Baxter, as U.S. Magistrate Judge, U.S. District Court for the Western District of Pennsylvania, January 20.

Appointed: Gerrilyn G. Brill, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Georgia, January 20.

Appointed: Juliet E. Griffin, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Tennessee, January 9.

Appointed: Dennis James Hubel, as U.S. Magistrate Judge, U.S. District Court for the District of Oregon, January 24.

Appointed: Viktor V. Pohorelsky, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of New York, January 31.

Appointed: Barry Silverman, as U.S. Magistrate Judge, U.S. District Court for the District of Arizona, January 21.

Appointed: Gregg W. Zive, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Nevada, January 23.

Elevated: Judge Duross Fitzpatrick, to Chief Judge, U.S. District Court for the Middle District of Georgia, succeeding Chief Judge Wilbur Owens, February 1.

Elevated: Judge George W. White, to chief Judge, U.S. District Court for the Northern District of Ohio, succeeding

Chief Judge Thomas D. Lambros, February 10.

Senior Status: Judge John B. Jones, U.S. District Court for the District of South Dakota, January 1.

Senior Status: Chief Judge Wilbur D. Owens Jr., U.S. District Court for the Middle District of Georgia, February 1.

Retired: Magistrate Judge Volney V. Brown Jr., U.S. District Court for the Central District of California, February 1.

Retired: Chief Judge Thomas D. Lambros, U.S. District Court for the Northern District of Ohio, February 10.

Retired: Senior Judge George C. Pratt, U.S. Court of Appeals for the Second Circuit, January 31.

Retired: Magistrate Judge John H. Smith, U.S. District Court for the Northern District of Georgia, January 19.

Deceased: Senior Judge Vincent Broderick, U.S. District Court for the Southern District of New York, March 3.

Deceased: Senior Judge Juan Burciaga, U.S. District Court for the District of New Mexico, March 5.

Deceased: Senior Judge John F. Gerry, U.S. District Court for the District of New Jersey, March 10.

Deceased: Senior Judge Irving Goldberg, U.S. Court of Appeals for the Fifth Circuit, February 11.

Deceased: Senior Judge Frank J. Murray, U.S. District Court for the District of Massachusetts, February 12.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of March 1, 1995

Courts of Appeals	
Vacancies	16
Nominees	3
District Courts	
Vacancies	55
Nominees	14
Court of International Trade	
Vacancies	2
Nominees	0
Courts with "Judicial Emergencies"	24

Internet Opens Information Highway for Judiciary

An estimated 20 million people worldwide are on the Internet today, having e-mail messages, making conversation, and swapping resources. And there are more users every day. According to one recent report, the Internet doubles in size every 10 months. Why? Perhaps because the Internet is full of information. As an independent source of news, the Internet is traveled by users from American college students trading quips to Zapatistas in Mexico circulating communiqués. For example, the earliest firsthand accounts of the Kobe, Japan, earthquake appeared on the Internet.

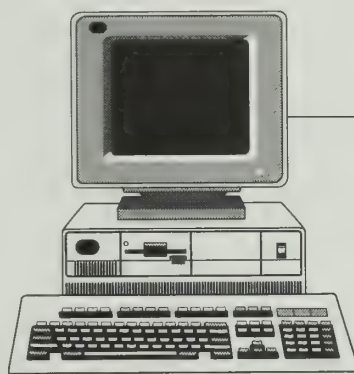
The Internet gives users access to special interest groups, libraries, publications and bulletin boards. Even the government is up and running on the information highway. Some legislative and government information is now linked to the Internet by way of the World Wide Web. The Library of Congress operates one such service called Thomas (<http://thomas.loc.gov>) in honor of Thomas Jefferson. The White House also offers a document service (<http://www.whitehouse.gov>). Some other guides to the Hill are: Capweb (<http://policy.net>); Fedworld (<http://www.fedworld.gov>); and Congress (<http://www.house.gov>). The Government Printing Office also makes the *Congressional Record*, the *Federal Register*, and several other publications available on the Internet.

All that free-flowing, unregulated (so far), uncensored (most of the time) information may make one wonder who is out there looking in your files. After all, the Internet is intended to be a two-way information highway. With their best interests in mind, most companies and agencies have instituted rules for employees who regularly travel the Internet. They may require computers used to

access the Internet to be stand-alone—disconnected from any mainframe that may contain company files. Another solution is the firewall. The Administrative Office has designed and uses a firewall, a specialized computer that sits between the AO networks and the Internet to filter incoming traffic and control outgoing messages. This firewall protection will soon be made available to all Judiciary Data Communications Network (DCN) users.

While the Internet may be the most conspicuous access to Judiciary information, there are others. In theory, a hacker could gain access to the Judi-

ciary network through any modem. In response, the AO is planning a network risk study to review all the networks used by the Judiciary, including the DCN and UNIX, to be certain there are no paths a hacker could follow around the firewall. Guidelines have been established for the proper use of Internet mail as plans are finalized to begin e-mail to and from Internet addresses. In the very near future, the Judiciary also will have its own bulletin board on the Internet, where information frequently requested by the public can be posted, including press releases and statistical data.



Internet Security Tips and Procedures

- Downloading any information carries the risk of virus or other contamination. Check all information for viruses before running and avoid access to information that contains embedded scripts that are executed on the local machine.
- Avoid use of the Internet to access commercial information providers; passwords can be tapped and your account accessed by unauthorized users.
- There is no privacy on the Internet. Information sent on the Internet may be read by every site the information passes through.
- Most Internet access software for PCs can safely run on PCs connected to internal networks, since the software does not provide symmetrical service to the Internet. However, use caution. There are many sources of Internet access software with many different options and capabilities.
- Direct Internet connection is not recommended. The connection, even with a filtering router, exposes the entire court network to the Internet.

The benefits and risks of Internet access are addressed in the November 1994 *IRM Bulletin* 94-16, sent to all chief judges, clerks of courts, and telecommunications coordinators.

INTERVIEW

Interview continued from page 1
comparing you to Bill Hughes and his predecessor, Bob Kastenmeier?

A: You are correct that I have served as the ranking member of the Courts and Intellectual Property Subcommittee since 1982. Up until 1990, Bob Kastenmeier (D-Wis.) was the chairman of the subcommittee, and from 1990-94, it was

Q: Your work as a member of the Federal Courts Study Committee has helped you develop a well-informed and broad understanding of the operation of the U.S. courts. Do you have a general impression of how successfully the nation's courts operate today?

A: Since you reference the Federal Courts Study Commit-

tee, I would just like to note that serving on that committee under the able leadership of Judge Joseph Weis (3d Cir.) was a very positive experience for me and one that increased my awareness and sensitivity to many of the problems facing the federal courts. The committee performed a valuable service and a number of its recommendations have been enacted into law. I think on balance, the federal Judiciary has done an admirable job of coping with a caseload that certainly shows no signs of abating. That is not to say that there are not significant problems, such as long delays for civil cases in many judicial districts and the costly nature of the system in many respects. I think Chief Justice Rehnquist took an important step in addressing many of these problems when he established the Judicial Conference Committee on Long Range Planning. The courts study committee had encouraged this step. I eagerly await the receipt of the final version of the long range plan. It will

give us some indication of the health of the federal courts and the areas needing improvement.

Q: You mentioned that the Subcommittee on Courts and Intellectual Property has put together an oversight plan for the 104th Congress. What are some of the key aspects of this plan that may be of interest to the Judiciary?

A: The Subcommittee's oversight plan for the 104th Congress does include several activities that are directly related to the federal Judiciary. For instance, it is the subcommittee's intention to hold an oversight hearing on the federal judicial branch and the Administrative Office sometime this spring. As part of that hearing, or possibly at a separate hearing, the subcommittee will want to examine the activities of the Federal Judicial Center. Additionally, the subcommittee may hold an oversight hearing on the Rules Enabling Act as well as a hearing to explore how the 20 court-annexed arbitration programs are working with a view towards expanding arbitration. Of course there are other issues that could come up in the next year and a half, but generally I believe that the oversight plan will serve as a road map for the areas the Judiciary Committee and its subcommittees hope to cover.

Q: You have served on the Judiciary Committee for a number of years with Representative Pat Schroeder (D-Col.). Now Congresswoman Schroeder will be the ranking member of your subcommittee. What type of working relationship do you expect to have?

A: I am very pleased to have Congresswoman Schroeder

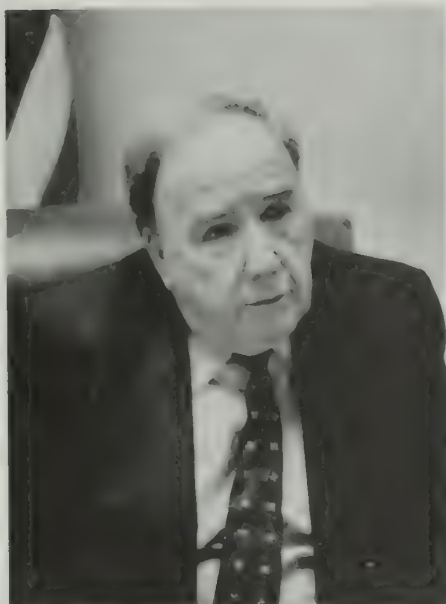
"My tenure on this subcommittee and the discussions I have had over the years with both the federal and state judges in my district in California certainly have sensitized me to the implications of federalization."

Bill Hughes (D-N.J.) Both Bob and Bill were excellent chairmen, and I was fortunate to have had the opportunity to serve with them. I think that they both took a very active interest in the federal courts, which is something I plan to continue doing as chairman. Overall, I do not anticipate that you will see any major changes in the way the subcommittee conducts business. Its history has always been one of bipartisanship with an emphasis on reaching a consensus on the various issues when possible. This is what I am striving for in the 104th Congress. As you know, some of the important elements of the *Contract with America* passed through this subcommittee. I don't expect any great surprises this Congress. As a matter of fact, the Judiciary Committee and its subcommittees have published a plan for the issues over which they hope to exercise their oversight responsibilities this Congress. I think that all involved will find this to be a useful and fair approach.

s the ranking member of the subcommittee. While she did not serve in the subcommittee last Congress, he has served with distinction on this subcommittee in past congresses and has always been a valued member. I think she would agree with me that we have already established a good, solid working relationship in the first few months of the 104th Congress. I am optimistic that together we can accomplish much this Congress. This subcommittee has a tradition of bipartisan cooperation. Over the years, many bills have passed through this subcommittee with the solid backing of Republicans and Democrats. I expect Congresswoman Schroeder and I can build on this tradition. I am equally optimistic that my chairman and longtime friend, Henry Hyde (R-Ill.), will enjoy a similar relationship with Ranking Member John Conyers (D-Mich.).

Q: One area you mentioned in your written oversight plan is courthouse construction. Your subcommittee has exercised no oversight in this area for more than 30 years. Why has this area become a part of the subcommittee's jurisdiction?

A: I guess you could say that the subcommittee's interest in courthouse construction is prompted, in part, by the tenor of the times. You have a situation in Congress where we are struggling to square every dollar in the federal budget, and the Judiciary is not more immune from that process than anyone else. In addition, you have a recent report that originated in the Senate that is very critical of several courthouse construction projects. The courthouse construction process has been the topic of much discussion in recent years, and I believe that this subcommittee can have an important role in helping to assure



that citizens have adequate access to our justice system and that courthouses are built with a keen eye on their ultimate cost. I believe that everyone involved in the process of courthouse construction—the Congress, GSA, and the Judiciary—bear responsibility for assuring that our tax dollars are spent wisely and that when courthouses are built they are actually needed and not just pork barrel projects to bring federal money back to districts. Just as important, GSA must take advantage of fast-changing market conditions to obtain the best prices and the Judiciary must do its part by adhering to the design standards adopted by the Judicial Conference. I believe this subcommittee can help bring additional discipline to the process, and I look forward to working with the judges in this regard.

Q: Your subcommittee has expressed its long-standing devotion to improving the delivery of justice by the federal and state courts. A major key to addressing this issue rests in the proper allocation of workload among the two court systems. Will the subcommittee consider the issue of the federalization of the workload of the courts?

A: The answer is yes. As we are all aware, there has been a strong trend in Congress to federalize what have traditionally been state issues. This is especially true in the criminal justice area, where, for example, Congress has seen fit to make carjacking a federal offense as well as giving the federal courts jurisdiction over fathers who shirk child support and then cross state lines. I recall last year when Judge Stanley Marcus (S.D. Fla.) testified before the subcommittee, he pointed out that if present caseload trends continue in the federal courts, the volume of litigation under current workload standards "would require an enormous increase in the number of district judges and circuit judges, transforming the existing nature of the federal judicial system virtually beyond recognition." Clearly, this is an important issue. My tenure on this subcommittee and the discussions I have had over the years with both the federal and state judges in my district in California certainly have sensitized me to the implications of federalization.

Q: The federal courts cannot influence their workload. As a

See Interview on page 12

Interview continued from page 11


result, there are few areas of the judicial branch appropriation that could withstand any significant reduction. Do you see a role for the authorizing committees in assuring that the Judiciary receives the necessary resources to carry out the duties it is assigned by Congress?

A: There is a definite role for the Subcommittee on Courts and Intellectual Property to play when it comes to the judicial branch appropriation. Over the course of the last several years, I've joined with first, Bob Kastenmeier, and most recently Bill Hughes, in writing to our counterparts on the Appropriations Subcommittee on Commerce, Justice, State, and Judiciary to advocate for a fully funded Judiciary. Clearly the subcommittee can and has played an important role in advancing the bud-

getary needs of the federal Judiciary. As the need arises, I certainly am prepared to communicate to the appropriations committee's new chairman, Harold Rogers (R-Ky.). I recognize that anytime Congress assigns new responsibilities to the federal courts, necessary resources also must be provided. At the same time, we all must understand that we are operating in an era of fiscal austerity. The difficulty Congress faces is trying to reconcile these two facts.

Q: The House's legislative agenda has been driven by the *Contract with America*. What types of issues that aren't part of the contract are likely to receive serious consideration by the House this year?

A: I think once the House completes the *Contract With America*, it will begin the very diffi-

cult task of cutting spending. So I think after these first 100 days, the primary focus will be on the budget process and appropriations bill. Beyond that, some of the possible issues I've heard mentioned are welfare reform, immigration reform, a farm bill, a telecommunications bill, and a superfund bill. In addition, I understand that the Judiciary Committee has agreed to hold hearings on various gift-ban proposals. I am pleased that our subcommittee could contribute to the fulfillment of the *Contract with America*. For sometime I have been concerned with how we can make the nation's civil justice system more viable for all Americans. The Common Sense Legal Reform Act is a significant step in the right direction. I believe it will be a very active and productive Congress. 

THE THIRD BRANCH

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THE THIRD BRANCH

FY 96 Judiciary Budget Presented to Congress



(L to R) AO Director L. Ralph Mecham, Judge M. Blane Michael (4th Cir.), Judge Richard S. Arnold (8th Cir.), and Judge John G. Heyburn, II (W. D. Ky.) prepared to present the judiciary's budget request to Congress.

On March 29 and 30, 1995, the Judiciary presented its fiscal year 1996 budget request of \$3.13 billion to the Senate and House Appropriations Subcommittees on Commerce, Justice, State, the Judiciary and Related Agencies. Chief Judge Richard S. Arnold (8th Cir.), chairman of the Judicial Conference Budget Committee, accompanied by Judge John G. Heyburn, II (W. D. Ky.), Judge M. Blane Michael (4th Cir.), and Administrative Office Director L. Ralph Mecham, asked Congress to appro-

priate adequate funds for the courts to perform their vital role in the nation's law enforcement efforts.

"It is critical that the Judiciary not become a weak link in the criminal justice system because we do not have the resources to meet the workload imposed on us," Arnold said. Specifically, he told the subcommittees that the Judiciary needs adequate resources to provide a sufficient number of probation officers to supervise released prisoners, to

See Budget on page 4

INSIDE

Congress Cuts Courthouse Funding	8
Videoconferencing Links Courts	9
New Sentencing Commission Chair Interviewed	10

Newsletter
of the
Federal
Courts

Vol. 27
Number 4
April 1995



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Conference Receives Long Range Plan

Last month the Judicial Conference received from its Committee on Long Range Planning a comprehensive long range plan for the federal Judiciary.

Acting at its semiannual meeting in Washington, the Conference voted to approve a procedure whereby specific recommendations and strategies in the proposed plan be referred to appropriate committees by April 11, 1995, for additional study and a report to the September 1995 session of the Conference. [See the next issue of *The Third Branch* for a list of items referred to committees.]

The plan, which contains 101 different recommendations and 77 implementation strategies, follows more than three years of study and consultation with interested parties in all three branches of government, lawyers, and many others who have interest in the federal courts. Three public hearings were conducted late last year to solicit comments on a draft of the plan.

The long range plan is organized in chapters addressing the central elements of the federal courts' mission and function, including jurisdiction, adjudicative structure and

See Conference on page 2

Conference continued from page 1

procedure, internal governance, judicial and other resources, and the broader society in which the courts operate. Within each area, the plan makes recommendations and, where appropriate, provides strategies for implementation.

The plan is premised on a future in which the federal courts conserve the core values that exist today—the rule of law, equal justice, judicial independence, limited jurisdiction, excellence, and accountability—while maintaining the flexibility to respond to new challenges. The plan also acknowledges that a different, much less desirable, future looms if current workload trends continue and incremental reforms are unsuccessful. These alternative outlooks, which emphasize the importance of a far-sighted approach to policy-making, provide a unifying framework for the plan.

In its final report in April 1990, the Federal Courts Study Committee, which was chaired by Judge Joseph

F. Weis, Jr. (3rd Cir.), had recommended that a long range planning capability be established within the Judicial Conference.

The nine judges who serve on the Long Range Planning Committee have a total of 170 years of combined judicial experience. The committee is chaired by Judge Otto R. Skopil, Jr. (9th Cir.).

In other action, the Conference:

- Approved a recommendation of its Executive Committee stating that, "The Judicial Conference clarifies that the Court Administration and Case Management Committee is not prohibited from proposing pilot programs or conducting other studies necessary to the making of further recommendations on cameras in the courtroom in civil cases which differ from those disapproved by the Judicial Conference at its September 1994 session."

At its September 1994 session, the Conference had declined to approve an expanded use of cameras in the courtroom in civil proceedings. From

July 1, 1991, until December 31, 1994, two courts of appeals and six district courts participated in a Conference pilot, which permitted photographic, electronic recording, or live broadcast of civil proceedings only.

- Approved an advisory note to the fee schedule with respect to granting exemptions from electronic public access fees. The note will state, in part, that courts may exempt persons or classes of persons from the fees in order to avoid unreasonable burdens and to promote public access to such information. Exemptions should be granted as the exception, not the rule. The exemption language is intended to accommodate those users who might otherwise not have access to the information in electronic form. (See box below.)

Because of the increase in the number of courts offering electronic access to court data, the Conference also voted to reduce the \$1 per minute fee for users to 75 cents per minute. In the Judiciary's 1990 appropriations act, Congress directed the Conference to prescribe reasonable fees for the electronic access to court data. The funds collected are to offset the cost of administering the electronic access system.

- Agreed to adopt a policy to allow for the waiver for victims of natural disasters of certain miscellaneous bankruptcy fees associated with obtaining copies of discharge orders and other documents required by the Federal Emergency Management Administration (FEMA) in applying for emergency aid.

Waivers of certain bankruptcy fees were granted in August 1993 for Midwest flood victims and in August 1994 for Southeast flood victims. While the Judiciary historically has been reluctant to grant exceptions to the collection of fees, the circumstances arising from natural disasters are so unusual that the exemptions granted have had ↗

Policy on Electronic Public Access Fees

The Judicial Conference has prescribed a fee for electronic access to court data, as set forth in the Miscellaneous Fee Schedules. The schedules provide that the court may exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. Exemptions should be granted as the exception, not the rule. The exemption language is intended to accommodate those users who might otherwise not have access to the information in this electronic form. It is not intended to provide a means by which a court would exempt all users.

The following examples of persons and classes of persons who may be exempted from electronic public access fees include, but are not limited to indigents, bankruptcy case trustees, not-for-profit organizations, and voluntary ADR neutrals.

Adherence to the Judicial Conference policy for granting exemptions will be necessary for courts to receive full funding for electronic public access related services to the extent such funding is derived from fees for electronic access.

minimal financial impact on the Judiciary

■ Voted to modify the proposed amendments to Rule 26 (c) of the Federal Rules of Civil Procedure by deleting the words "on stipulation of parties." Subsequently, the Conference voted to recommit for further consideration the proposed amendment to Rule 26(c) to the Standing Committee on Rules of Practice and Procedure.

■ Adopted a resolution stating that invidious discrimination has no place in the federal Judiciary and encouraging the circuit judicial councils to study whether bias exists in the federal courts based on gender, race or other invidious discrimination, and whether additional educational programs are necessary.

The Conference previously had adopted resolutions encouraging each circuit to sensitize judges, supporting personnel, and attorneys to concerns of bias and the extent to which bias may affect litigants, witnesses, attorneys, and all those who work in the judicial branch. All circuits have addressed this issue in some fashion.

■ Agreed to adopt a process for prioritizing courthouse construction and alteration projects requiring congressional authorization, utilizing a set of criteria based on urgency, which includes recommendations by circuit judicial councils and the Committee on Security, Space and Facilities, and the approval of the Judicial Conference.

■ Elected to the board of the Federal Judicial Center, Judge Bruce M. Selya (1st Cir.), replacing Judge Edward R. Becker (3rd. Cir.); and Chief Judge Richard P. Matsch (D. Col.), replacing Judge Martin L.C. Feldman (E. D. La.).

The Judicial Conference of the United States Chief Justice William H. Rehnquist, Presiding

Chief Judge Juan R. Torruella Chief Judge Joseph L. Tauro	First Circuit District of Massachusetts
Chief Judge Jon O. Newman Judge Charles L. Brieant	Second Circuit Southern District of New York
Chief Judge Dolores K. Sloviter Chief Judge Edward N. Cahn	Third Circuit Eastern District of Pennsylvania
Chief Judge Sam J. Ervin, III Judge W. Earl Britt	Fourth Circuit Eastern District of North Carolina
Chief Judge Henry A. Politz Chief Judge Morey L. Sear	Fifth Circuit Eastern District of Louisiana
Chief Judge Gilbert S. Merritt Chief Judge John D. Holschuh*	Sixth Circuit Southern District of Ohio
Chief Judge Richard A. Posner Chief Judge Michael M. Mihm	Seventh Circuit Central District of Illinois
Chief Judge Richard S. Arnold Judge Donald E. O'Brien	Eighth Circuit Northern District of Iowa
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Chief Judge Harry T. Edwards Chief Judge John Garrett Penn	District of Columbia Circuit District of Columbia
Chief Judge Glenn L. Archer, Jr.	Federal Circuit
Chief Judge Dominick L. DiCarlo	Court of International Trade

Conference Secretary:
L. Ralph Mecham, Director
Administrative Office of the U.S. Courts

* By designation.

Budget continued from page 1

perform necessary drug testing to help ensure that defendants and convicted criminals on supervised release remain drug free, to provide for needed security in courthouses, to hire additional court personnel to avoid lengthy delays for trials, and to provide defense counsel for those who cannot afford their own lawyer.

At the Senate hearing, appropriations subcommittee chairman, Senator Phil Gramm (R-Tex.), expressed his strong support for the Judiciary's role in law enforcement and pledged to do his best to fully fund the Judiciary. He indicated, however, that this could prove to be difficult, given the tight limits on domestic discretionary spending that Congress is expected to impose to reduce taxes and bring down the deficit.

House appropriations subcommit-

tee chairman, Representative Harold Rogers (R-KY), echoed this theme of tight funding. He began the House hearing the next day by stating that the nearly 15 percent funding increase requested by the Judiciary was unrealistic, as the money simply was not there even though it was needed. Rogers outlined the subcommittee's past generosity with the Judiciary and acknowledged the increased workload that was driving up costs. Rogers said that he was describing the tight funding scenario to all activities under his subcommittee's jurisdiction. He emphasized the need for efficiency and streamlining and asked how far the Judiciary could go to achieve real savings—not just reductions in the rate of increase but actual savings over prior years.

Arnold told both the Senate and

House subcommittees of the various efforts underway in the Judiciary to hold down spending and increase productivity. At the forefront is the Judicial Conference's Economy Subcommittee, which performs an OMB-type function by reviewing Judiciary spending while working closely with other Conference committees in leading a Judiciary-wide effort to improve efficiency.

An example given by Arnold was the decision by the Judicial Conference to staff the courts at only 84 percent of the required level in FY 95, which means that the average court is operating at 16 percent below the level needed to fully carry out the necessary court activities. The FY 96 request is only 86 percent of the staffing level needed to handle anticipated workload. By limiting staffing requests in both FY 95 and 96, Arnold pointed out that the Judiciary was able to avoid costs of almost \$300 million. However, Arnold made it clear that there are adverse effects to this action. For example, staffing cutbacks have forced some courts to reduce the hours they are open to the public, and in some courts, staff are working overtime without compensation. In a number of courts, training opportunities for court personnel have been canceled or delayed. This practice cannot continue for a long period without adversely affecting the competency and productivity of the staffs.

Citing the Judiciary's commitment to improve operating efficiency, Arnold testified that annual operations and maintenance costs for automated equipment were reduced by \$10 million through a variety of efficiency measures; a centralized facility was established to send out notices in bankruptcy cases, saving \$7 million over the next four years; and standards for court security officers were adopted that reduced the request for these officers by \$12.5 million in FY 96. ↗

Judiciary Appropriations (\$ in Thousands)

Account	FY 95 Enacted	FY 96 Request
Supreme Court		
Salaries & Expenses	24,240	25,834
Buildings & Grounds	3,000	4,003
Federal Circuit	13,438	15,495
Court of International Trade	11,685	10,859
Salaries & Expenses	2,340,127	2,645,965
Defender Services	250,000	295,761
Fees of Jurors	59,346	72,008
Court Security	97,000	116,433
Administrative Office	47,500	53,445
Federal Judicial Center	18,828	20,771
Ret. Funds	28,475	32,900
Sentencing Commission	8,800	9,500
Crime Trust Fund	0	30,700

Arnold, who was also accompanied by Mecham at the Senate hearing and by both Mecham and Judge William W. Schwarzer, director of the Federal Judicial Center, at the House hearing, described the role of both the AO and the FJC in providing essential support to the courts' economy efforts. The AO provides leadership and staffing to help the Judiciary meet its goal of maximizing productivity and improving management throughout the Judiciary, Arnold said in his testimony. The FJC education programs and reference manuals enable judges to control the costs of litigation, and court clerks and probation officers to increase their productivity. The AO is seeking an appropriation of \$53.4 million in FY 96, representing 1.6 percent of the Judiciary's request. Judiciary funding as a whole has grown by 22 percent from the fiscal years 1992 to 1995, while AO funding has grown by only 6.3 percent during that time. The FJC has requested \$20.7 million, representing .6 percent of the Judiciary's request.

Chairman Gramm emphasized during the Senate hearing that speedy justice is vital to the nation and went on to question the need for Post-Conviction Defender Organizations. He was particularly interested in the Texas center. Arnold emphasized that the number of death row inmates was growing and that the Post-Conviction Defender Organizations were the best and least expensive way to carry out the Judiciary's duties.

Chairman Rogers was particularly critical of the possible role of judges in adding unnecessarily to the cost of courthouse construction. He also asked about the work underway in the Judiciary to identify places of holding court that may be underutilized. Arnold explained the relationship between the Judiciary and the General Services Administration and the limited role that judges play in courthouse construction.

To emphasize the House's law en-

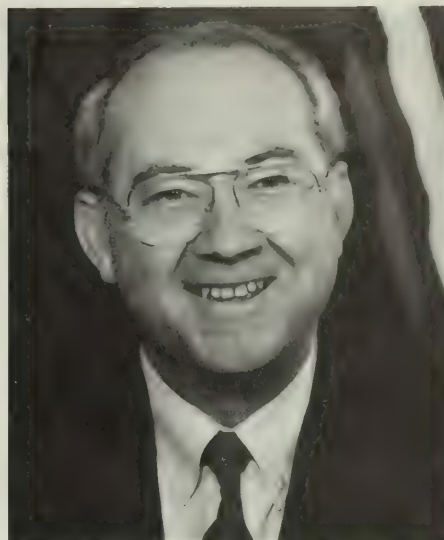


Representative Harold Rogers

forcement theme, the director of the U.S. Marshal Service, Eduardo Gonzalez, and the director of the Executive Office of the U.S. Attorneys, Carol DiBattiste, testified immediately following the Judiciary. Rogers was interested in the interrelated workload of the courts, the U.S. attorneys, and the U.S. marshals. He also wanted to hear about the videoconferencing capability that will be in each U.S. attorney's office by July 1996 and the status of the reorganization of the U.S. Marshal Service being proposed by the Administration.

The salaries and expenses of the appellate, district, and bankruptcy courts, and probation and pretrial services offices account for a total of \$2.65 billion of the FY 96 Judiciary request. In addition to inflation and rent increases, full funding would allow clerks and probation and pretrial services offices to be staffed at an 86 percent level; provide funds for new magistrate and bankruptcy judges; and allow probation officers to meet the increased need for drug dependent and mental health treatment.

The Judiciary also is requesting \$296 million for defender services. A portion of the requested increase, if approved, will allow for a \$5 an hour rate adjustment in those districts still paying \$60 per in-court hour and \$40




Senator Phil Gramm

per out-of-court hour, where a \$75 per hour flat rate has been authorized. Panel attorney rates in 78 out of the 94 judicial districts have not been raised since 1984, and it is becoming increasingly difficult to obtain competent representation.

The request for the fees and expenses of jurors is \$72 million, which will help fund a projected increase in the number of juror days in FY 96. The court security request is \$116.4 million, which will provide for new security officers and equipment for new court facilities, and enhance security at existing facilities.

The Judiciary is also seeking the appropriation of the \$30.7 million that was authorized under the Violent Crime Reduction Trust Fund, in the Violent Crime Control and Law Enforcement Act of 1994.

The next step for Congress will be to pass a Joint Budget Resolution, probably in May, to set overall spending levels for the government over the next five years. The funds available for FY 96 will then be divided between the 13 appropriations subcommittees, and the subcommittees will begin marking up their bills. The level of funding that will be appropriated for the Judiciary will not be known until after the bills are marked up later this year. 

Congress Cuts Courthouse Construction Funding

On April 6, 1995, the Senate passed H.R. 1158, the Emergency Supplemental Appropriations Act, that included among other things an amendment that cuts funds previously appropriated for numerous programs, including courthouse construction. The amendment, introduced by Senator Richard Shelby (R-Ala.) is intended to rescind funding from every major federal construction project for which a construction contract has not yet been awarded. It passed the Senate by a 79-15 vote.

Prior to the introduction of Shelby's amendment, Senator Bob Kerrey (D-Neb.) had introduced an amendment rescinding \$324 million from courthouse projects, noting, "There will be no interest groups that will say, gee this is going to hurt us in some measurable or appreciable fashion. These are merely projects." Shelby responded that the Senate's cuts were significantly more than the House. "I say to the Senate do not make it a political bidding war regarding projects. . . . Should we follow the Senator from Nebraska and his process, in all fairness, should we not put all projects on the table. I have a list here which includes all of the new construction projects, repair and alteration projects, as well as, the time out and review savings the GSA has indicated can be saved. The project is inclusive of projects where no construction has begun. I hope we will not get into this on the Senate floor." The Senate bill, with the Shelby amendment included, passed the Senate on April 6.

It is not yet known when the legislation will go to a congressional conference committee to be reconciled with the House-passed version of the supplemental appropriations bill. The House legislation would rescind about \$58 million in funds for

four federal court facilities. The Senate version would delete in excess of \$900 million in funding for nearly 50 court facilities. The Senate has named all members of its appropriations committee as conferees. The House has not yet selected its conferees.

In offering his amendment, Shelby said it "would basically say that all new construction projects under the General Services Administration, the federal buildings fund, construction and repair projects where no earth has been turned, no overt things

have been done as far as repairs on the building as yet—in other words, nothing done—this basically would total \$1.84 billion dollars' worth of projects in not every state but a lot of states in the Union . . . would be knocked out of the appropriations bill. They would be gone."

The AO is working with GSA and the courts to assess the impact of these proposed recisions and will keep the courts advised of further developments.

Senator Heflin Announces Retirement



Senator Howell T. Heflin

A long-time friend of the federal Judiciary, Senator Howell T. Heflin (D. Ala.), has announced that he will not seek reelection in 1996. Heflin was chair of the Senate Judiciary Subcommittee on Courts and Administrative Practice from 1987 until 1995. He currently is the subcommittee's ranking minority member.

A member of the Federal Courts Study Committee, Heflin also has supported numerous judicial im-

provements bills, reform of the Judicial Survivors' Annuities System, and bankruptcy reform.

In a speech on the Senate floor announcing his retirement, Heflin, a former chief justice of Alabama, said, "I brought to the Senate a desire to achieve much modernization and reform in our federal courts. My efforts have been focused on improving the federal judicial system and relieving court congestion in criminal and civil matters.

"We have been successful to a major degree in our efforts to achieve these goals. However, much remains to be done. This country's system of justice today faces one of its greatest threats in the Congress. The foundation of our civil justice system and more than 500 years of the development of common law are under attack, including the right of trial by jury. We will continue the battles to improve the administration of justice, as well as maintain its historic role of the protecting the weak, the minorities and the defenseless."

APRIL

19-21 Wednesday-Friday
Conference of Chief District Judges

20-22 Thursday-Saturday
Advisory Committee on Civil Rules

MAY

4-6 Thursday-Saturday
Advisory Committee on Evidence Rules

14-19 Sunday-Friday
Orientation Seminar for Newly Appointed District Judges

25 Thursday
Federal Circuit Conference

25-27 Thursday-Saturday
Eleventh Circuit Conference

28-31 Sunday-Wednesday
First Circuit Conference

31-June 1 Wednesday-Thursday
Workshop for Bankruptcy Judges

31-June 2 Wednesday-Friday
Committee on Criminal Law

MAGISTRATE JUDGE, Southern District of New York

The U.S. District Court for the Southern District of New York is accepting applications for the position of full-time Magistrate Judge at New York, New York. Qualified applicants must be a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands for at least five years; have been engaged in the active practice of law for a period of at least five years (with some substitutions authorized); be competent to perform all duties of the office; be less than 70 years old; and not be related to a judge of the district court. The present salary for the position is \$122,912 per annum. Candidates should submit applications to Clifford P. Kirsch, District Court Executive, U.S. Courthouse, Room 820, 500 Pearl Street, New York, NY 10007-1312. An original plus 12 copies of a cover letter and resume must be received by **May 19, 1995**.

MAGISTRATE JUDGE, District of New Hampshire

Applications are being accepted for a full-time Magistrate Judge in Concord, New Hampshire. The current annual salary is \$122,900. The term of appointment is eight years. A full public notice for the position is posted in the Office of the Clerk of the District Court at 55 Pleasant Street, Room 412 in Concord. Interested persons may contact this office at (603) 225-1423 for additional information and application forms. Applications must be submitted by applicants personally and must be received by **May 1, 1995**.

MAGISTRATE JUDGE, Western District of Kentucky

Applications are being accepted for a full-time Magistrate Judge position effective October 1, 1995, and subject to congressional funding. The position will be located in Louisville. The duties of the position will include conduct of most preliminary proceedings in criminal cases; trial and disposition of misdemeanor cases; conduct of various pretrial matters and evidentiary proceedings on delegation from the judges of the court; and trial and disposition of civil cases upon consent of the litigants. Salary: \$122,912. Term of office is eight years. Further information and application forms can be obtained from Personnel Specialist, U.S. District Court, Room 450, 601 West Broadway, Louisville, KY 40202, or by calling (502) 582-5156. Application deadline is **June 16, 1995**.

DEPUTY CIRCUIT EXECUTIVE, Third Circuit

The U.S. Court of Appeals is soliciting applications for the position of Assistant Circuit Executive. Applicants must have at least eight years of progressively responsible administrative or legal experience, including at least three years in a position of substantial management responsibility. Experience in the federal judiciary, particularly in the budget and fiscal management area, is strongly preferred. A bachelors degree is required and an advanced degree in law, management, or in a related field is desired. Excellent written and oral communication skills as well as strong analytical skills are a must. Salary: \$72,194-\$110,073 (JSP 15/16). Send letter of application and detailed resume to Circuit Executive, Third Circuit, 601 Market Street, Room 21613, Philadelphia, PA 19106. Applications must be received no later than **May 1, 1995**.

BANKRUPTCY CLERK, District of South Dakota

The Clerk serves as the chief administrative officer for the court and is under the direct supervision of the judge. Applicants must possess good administrative abilities and strong interpersonal skills. Knowledge of bankruptcy law and procedures is desirable. An undergraduate degree in public or business administration or a related field is required. A law degree or graduate degree in court or public administration is desirable. Salary range: \$59,920-\$82,664. Send a letter of application and resume to Honorable Irvin N. Hoyt, Chief Judge, U.S. Bankruptcy Court, 225 S. Pierre Street, #211, Pierre, SD 57501.

EQUAL OPPORTUNITY EMPLOYERS

Judicial Conference Honors FJC Director Schwarzer

Judge William W. Schwarzer (N.D. Calif.), who retired as director of the Federal Judicial Center on March 31, 1995, was the guest of honor at a Supreme Court reception hosted by Chief Justice William H. Rehnquist and Administrative Office Director L. Ralph Mecham, following the Judicial Conference's March meeting. The reception was attended by several associate justices, members of the Judicial Conference, and the executive staff of the FJC and AO. Chief Justice Rehnquist presented the retiring director with a Judicial Conference resolution honoring his five years of service. Schwarzer, who has reached the statutory retirement age for a director of the FJC, returns to California. As a senior judge, he will sit by designation on various federal courts. His successor at the FJC is Judge Rya W. Zobel (D. Mass.).



Judge Schwarzer introduces his family to Chief Justice William H. Rehnquist.



(L to R) Chief Judge Richard S. Arnold (8th Cir.) talks with Judge Charles L. Brieant Jr. (S.D. N.Y.).



The Chief Justice looks on as AO Director L. Ralph Mecham bids farewell to Judge Schwarzer.



Judge Schwarzer greets Justice and Mrs. Lewis F. Powell, Jr.

JUDICIAL MILESTONES

Appointed: Sven Erik Holmes, as U.S. District Judge, U.S. District Court for the Northern District of Oklahoma, March 8.

Elevated: Judge John E. Conway, to Chief Judge, U.S. District Court for the District of New Mexico, succeeding Chief Judge Juan G. Burciaga, November 11.

Senior Status: Judge Jerome Farris, U.S. Court of Appeals for the Ninth Circuit, March 4.

Elevated: Judge Michael R. Hogan, to Chief Judge, U.S. District Court for the District of Oregon, succeeding Chief Judge James A. Redden, March 13.

Senior Status: Chief Judge James A. Redden, U.S. District Court for the District of Oregon, March 13.

Senior Status: Judge Henry Woods, U.S. District Court for the Eastern District of Arkansas, March 1.

Retired: Senior Judge Lawrence W. Pierce, U.S. Court of Appeals for the Second Circuit, March 31.

Deceased: Senior Judge John F. Kilkenny, U.S. Court of Appeals for the Ninth Circuit, February 17.

Deceased: Chief Judge Ronald E. Meredith, U.S. District Court for the Western District of Kentucky, December 1.

Deceased: Senior Judge James B. McMillan, U. S. District Court for the Western District of North Carolina, March 4.

Deceased: Judge William E. Steckler, U.S. District Court for the Southern District of Indiana, March 8.

THE THIRD BRANCH

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Conference Passes Resolution in Memory of Judges Gerry and Broderick

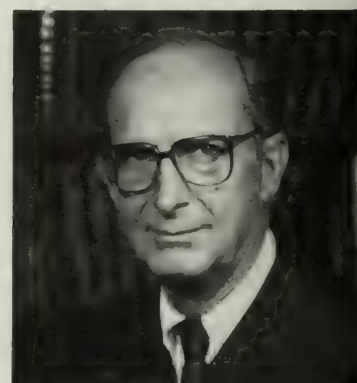
At its March meeting, the Judicial Conference passed the following resolutions.

"Judge [John F.] Gerry served with distinction on the federal bench for over twenty years, including seven years as chief judge of the District of New Jersey. As a member of the Judicial Conference and three of its committees, most notably as chairman of the Executive Committee, Judge Gerry played a pivotal role in shaping federal judicial administration. We will miss his wisdom, common sense, and his ever-present wit. He has left a legacy that will not soon be forgotten.



Judge Vincent L. Broderick

The members of the Judicial Conference convey their deepest sympathies to Judge Gerry's widow, Jean Gerry, and to his family."



Judge John F. Gerry

"Judge [Vincent L.] Broderick served the Judiciary with distinction for over 19 years. In addition to his contributions as a district judge in the Southern District of New York, he made a significant impact on federal judicial administration through his work as a member and chairman of the Judicial Conference Committee on Criminal Law.

The members of the Judicial Conference convey their deepest sympathies to Judge Broderick's widow, Sally Broderick, and to his family."

Videoconferencing Links Courts, Lawyers, and Litigants

A thick fog grounded flights into and out of the Austin, Texas, airport one morning last month. At an airport departure gate, Chief Bankruptcy Judge Larry E. Kelly (W. D. Tex.) waited with other passengers to make the 45-minute flight to Midland, Texas. He was scheduled to conduct routine docket hearings in the Midland bankruptcy court that morning, then hold a preliminary hearing in a large and complex proceeding in the afternoon, before flying back to Austin that evening. With him were several of the attorneys slated to attend the same preliminary hearing.

Meanwhile, in Midland, some of the 40 attorneys, witnesses, and other participants were beginning to gather for the day's hearings. With no sign of the fog lifting, an inconvenient delay in the hearing seemed inevitable. But court business went forward that March morning, nearly as planned, even though Kelly and the attorneys with him never made the Midland flight.

Kelly was able to take advantage of an option that currently exists for only a very few federal courts: videoconferencing of certain civil hearings between remote locations under a pilot program authorized by the Judicial Conference. The bankruptcy court in the Western District of Texas is one of five federal courts participating in a pilot program designed to evaluate the use of videoconferencing technology for certain routine hearings on civil matters. The Western District of Texas is the sole bankruptcy court participating and is the only court using the technology for purposes other than prisoner civil rights hearings.

The hearing Kelly called at his Austin courthouse on his return from the airport was the first use of his court's equipment. While he had not intended to utilize video-

conferencing for such large and complex hearings, planning rather to experiment with calendar calls and the hearing of routine motions, the availability of the technology in his court saved the day. A number of "teething" problems with the new equipment caused both frustration and unplanned moments of humor—for example when hand-guided cameras occasionally focused on walls or floors rather than on participants—but overall, the unanticipated use of videoconferencing technology for this large hearing went well.

Most experiments conducted by videoconferencing have been held under more controlled conditions. The three district courts currently participating in the pilot, the Middle District of Louisiana, the Western District of Missouri, and the Eastern District of Texas, have used videoconferencing in various prisoner civil rights hearings on a regular basis. In most instances, special rooms are equipped for videoconferencing in both the courthouse and the state prison participating in the pilot.

In yet another pilot, a prisoner mental competency hearing was held in the Eastern District of North Carolina, which also provided the court with the opportunity to hear a challenge by the public defender to the use of videoconferencing. The district court found that the use of videoconferencing in that hearing was appropriate and its ruling was upheld on appeal to the U.S. Court of Appeals for the Fourth Circuit.

The district court for the Eastern District of Texas has utilized videoconferencing for more than a year in certain preliminary prisoner civil rights hearings, known as *Spears* hearings, and has conducted more than 100 such hearings to date. The Administrative Office is presently

evaluating the Eastern District of Texas experience and will report to the Judicial Conference's Committee on Court Administration and Case Management. The district courts in the Middle District of Louisiana and the Western District of Missouri also have begun using videoconferencing in certain prisoner civil rights hearings and progress is being monitored by the AO.

An assessment of the videoconferencing pilot program is being conducted by the AO's Court Administration Policy Staff, which provides support to the Judicial Conference's Committee on Court Administration and Case Management.

JUDICIAL BOXSCORE

As of April 1, 1995

Courts of Appeals	
Vacancies	15
Nominees	4
District Courts	
Vacancies	49
Nominees	9
Court of International Trade	
Vacancies	2
Nominees	0
Courts with "Judicial Emergencies"*	24

** On March 15, 1988, the Judicial Conference of the United States noted the adverse effect Article III judicial vacancies of more than 18 months have on the courts and litigants, and said that all such vacancies created judicial emergencies.*

Judge Richard P. Conaboy: Striving for Equality in Sentencing

Judge Richard P. Conaboy (M.D. Pa.) was sworn in as chairman of the U.S. Sentencing Commission on November 4, 1994, for a term that will expire October 31, 1999. He was named to the federal bench in 1979 and served as chief judge of his district from 1989 until taking senior status in 1992.

Q: Do you have specific goals you seek to accomplish as the chairman of the U.S. Sentencing Commission?

A: I've only been with the commission since November, and it has taken me and the other commissioners a while to look at all the duties of the Sentencing Commission that are assigned by statute and to analyze what we do. But I've set a general four-step agenda for my term. The first step is to continue what I call our normal and assigned tasks—things like monitoring, research, training, running symposiums, and responding to congressional directives.

The second step of my agenda is to expand our program to measure the success of the guidelines process by developing measurement tools to see if we are fulfilling the congressional mandates that were outlined when the concept of the Sentencing Commission was ordained.

The third step is to begin what I'm calling a simplification project and study. I hope to bring in a consultant with experience in criminal guidelines and sentencing to work with us to see if we can't make our guidelines a little bit easier to use, and perhaps to inject into them some more discretion, and to make them easier to understand.

The fourth step of my agenda is to

begin a program to measure the best use and potential of the staff as presently allocated. We have what I think is an excellent staff, and I want to be sure everybody is being used to his or her best potential.

Q: Do you think that the Sentencing Guidelines are meeting the original goal of making sentencing uniform?

"It's very hard to run a true sentencing guidelines process while constrained by mandatory sentences. The two are almost incompatible."

A: That was one of the first things I asked when I became chairman. It's very difficult because you are making a comparison between an organized sentencing methodology and what in the past was total freedom without any restraints. We can say with accuracy that sentences now are more uniform, and we hope they're more proportionate because every sentencing judge now starts from the same place in terms of which sentence should be imposed. I don't think our departure rate is terribly high. The rate of sentencing within the guideline range has been over 75 percent. But you have to look at the numbers carefully because a lot of the departures are either by plea agreement or are brought about when the defendant cooperates and gets the benefit of a government motion for a downward departure. Such cases are not what we would normally think of as a departure based on the judge not thinking the sentence was proper.

Q: Into this mix, Congress has thrown mandatory minimum sentences. How do they affect the work of the commission?

A: They make our work difficult. It's very hard to run a true sentencing guidelines process while constrained by mandatory sentences. The two are almost incompatible. As a matter of fact, many sen-

tences in the federal guideline system are driven by mandatory minimum penalties that were in existence at the time the first guidelines were adopted. That's one of the areas of greatest criticism of the guidelines. I don't think there's any system that invites more criticism than mandatory minimum sentencing, because you just cannot fashion one sentence that fits every situation and every defendant and still takes into consideration all of the aspects involved in every criminal act.

Q: The commission recently released what is known as the "Crack Report." What were its findings? What has been the reaction?

A: The *Report on Cocaine and Federal Sentencing Policy* provides very vivid examples of the kinds of problems we encounter with mandatory sentencing. In such cases, defendants who were in possession of rather small, compara-

tively speaking, amounts of crack cocaine often were sentenced to greater time in prison than the people who supplied the original product to them. Crack cocaine is made from powder cocaine; it happens to be cheaper and easier to make and use than powder cocaine. As a consequence, crack gets distributed in the poorest segments of society. Those people are being punished much more severely than powder cocaine suppliers and dealers. That's a good example of how mandatory minimums, even if they came into existence with the best of intentions, do not work fairly.

We've received many comments about the cocaine report. At our public hearing in March, about 40 people testified, at least a dozen of whom spoke about the problems caused by mandatory sentencing. We have not had any direct testimony or statements from Congress, although I and some of my staff have met with a number of members of Congress and their staffs to discuss the report. I think it's safe to say that most people are in agreement that the current 100:1 quantity ratio has to be changed. What it will be changed to, of course, is problematic. We're working on that, and we hope to take some action on this issue at our April meeting.

Q: Now that the "Crack Report" has been issued, are there other studies or projects in the pipeline?

A: Yes, we have a couple of others that are very interesting. We're in the midst of a study on the role race plays in federal sentencing practices. We have another study on the issue of people being given credit for substantial assistance. And we have a third one, the "just punishment" study, which I think is going to be very interesting. We're trying to determine public perceptions of the



appropriate kinds of sentences for a variety of federal offenses.

For the most part, I don't think the public has any idea how severe the sentences are under the guidelines. The perception of the average person on the street seems to be that sentences should be more severe. But when the guidelines were passed, parole was also abolished in the United States courts. Consequently, people who are sentenced to five years or ten years serve essentially all of that time, except for a modest reduction for good time that they can accrue over a period of years. That's why our prisons are so overcrowded.


Q: There was a time when the commission was unpopular with federal judges. What's the relationship like today?

A: We still get a considerable amount of criticism—some from certain judges and probation officers who feel individual judges should have more discretion on individual sentences—that the guidelines are very constraining and that the method of going beyond the guidelines is very complicated and difficult. We get other criticism that the sentences are simply too severe, par-

ticularly for first offenders. The third line of criticism is that there is not enough attention paid to or room allowed for alternatives to prison sentences, such as home detention, intensive probation, or community detention. We seek opportunities to talk to judges. We have a number of advisory groups, and we try to respond to their concerns. Of course, in trying to respond, the commission has developed another layer of criticism: we're accused of offering too many amendments year after year, and people say they have a hard time keeping up with the amendments to the guidelines.

Q: What were your reasons for taking on the chairmanship of the commission?

A: I think it was Theodore Roosevelt who said something to the effect that every member of a profession owes some time and effort toward making the profession work better. I've always believed in that principle, and it has gotten me into a lot of very time-consuming, non-paying, but rewarding jobs. When you consider that crime control is a major concern of every citizen of this nation, sentencing—the area in which the courts are most directly involved—has to be one of the most important things that federal judges do.

When I first came on the bench at the state level, and when I got to the federal level in 1979, there were no guidelines of any kind. There was no direction given and no procedure judges followed that made any sense at all. The types of sentences imposed were left to good judgment, common sense, and experience. Sometimes that works well and sometimes it doesn't. I think most judges are much more content when they have a process that can be followed that leads to a sound and reasoned judgment. It's my hope that we still can make the guidelines work to achieve that result. 

Judges Meet With Senator Hatch on Issues of Mutual Interest



Judge Maryanne Trump Barry, (D. N.J.) chair of the Judicial Conference Committee on Criminal Law, and Judge Stanley Marcus (S. D. Fla.), chair of the Committee on Federal-State Jurisdiction, met last month with Senator Orrin Hatch (R-Utah), chair of the Senate Judiciary Committee, and members of his staff. At the meeting, Barry and Marcus discussed crime legislation, the federalization of state crimes, and adequate appropriations for the federal Judiciary as its responsibilities are increased by crime legislation.

THE THIRD BRANCH

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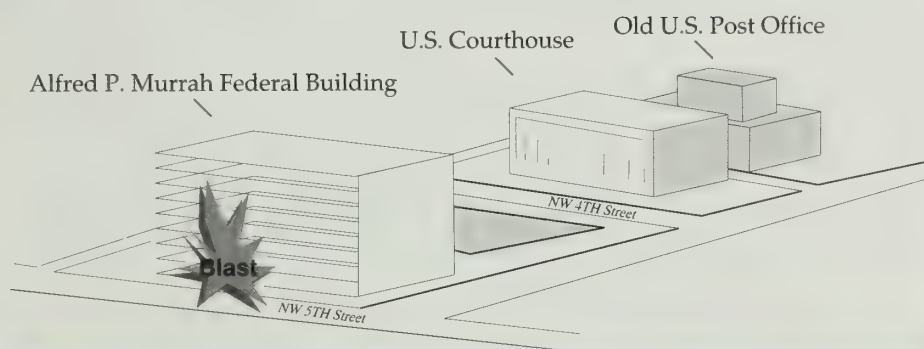
MAY 25 1995

LAW LIBRARY

Judicial Family Responds to Crisis in Oklahoma City

On April 19, 1995, Robert Dennis, clerk of court for the Western District of Oklahoma, had an 8:30 a.m. meeting in the Alfred P. Murrah Federal Building with Don Rogers, the GSA building manager. Rogers' office was on the first floor looking north through a wall of windows to traffic on Fifth Street. That morning's meeting to discuss several courthouse remodeling projects was over about 9:00 a.m., and Rogers and Dennis walked together to the elevators near the building's core. Most of America knows what happened next.

A 4,000 pound explosive device detonated on the north side of the building, tearing a huge section from the building and pancaking four lower floors. "I'd just gotten to the elevators," Dennis said, "when everything went black. There was a crashing, rumbling noise, a terrible sound. My first thought was that a boiler or transformer blew." After the blast hit there was total darkness. "The dust and smoke were so thick, I couldn't see, I couldn't breathe," said Dennis. "I thought I was going to suffocate. I yelled for Don." Rogers and Dennis had been standing next



The Alfred P. Murrah Federal Building was constructed in 1974 to house multiple agencies. The building was named in honor of Judge Murrah, who served as the U.S. district judge for the Northern, Eastern, and Western Districts of Oklahoma from 1937 to 1940. Born in 1904, he was one of the youngest judges to be appointed to a U.S. district court. Murrah was appointed to the Tenth Circuit in 1940, became chief judge of the circuit in 1959, and took senior status in 1970. He was director of the Federal Judicial Center from 1970 to 1974, and a member of the Judicial Conference from 1960 to 1970. Murrah died in 1975.

to each other when the bomb went off, but after the blast Dennis remembers going over and around debris to reach Rogers. "We held hands and tried to find a way out," he recalls. While struggling through the wreckage they found two women who'd also survived the blast, and the four of them made their way to the west end of the building. Because

of the way the building collapsed, the west end still offered an escape route.

Once free of the building, Dennis led the women to a safe place under some nearby trees, then ran down the block to the U.S. Courthouse, which houses the district court and chambers of two circuit judges. Located on the next street, just south of the federal building and separated only by a plaza, the courthouse was minimally sheltered from the blast's

See *Oklahoma City* on page 2

INSIDE

1995 Director's Awards Announced
Federal Courts Improvement Bill Transmitted
Republicans Unveil Seven-year Budget

4
6
12



"People are still traumatized, but in the main, everyone is back on the job."

—Chief Judge David L. Russell

Oklahoma City continued from page 1 impact. According to Chief Judge David L. Russell, "It looked like the bomb had gone off in our courthouse." Although there was no structural damage to the courthouse, the blast shattered more than 160 windows, sending shards of glass, some as long as 10 inches, into offices. Glass was later found embedded in wall paneling. In 25 percent of the building, ceiling tiles and fixtures, wiring, and plaster fell, damaging furniture and computer equipment. Utilities were disrupted and fire and life safety systems were inoperable.

The courthouse is connected by a pedestrian tunnel to the federal building. In the parking garage below the plaza separating the two buildings, cars belonging to probation officers were damaged when the lower level flooded.

One block south of the courthouse, separated by an alley, the Old U.S. Post Office Building also had sustained damage. The building rises several floors above the U.S. Courthouse, and the windows in this unshielded tower—floors five through nine—were destroyed, while the north-facing windows on the lower floors also were blown in. Approximately 20 percent of the ceil-

ing and light fixtures were damaged. The Old U.S. Post Office Building houses the bankruptcy court, federal public defenders' office, and the post office.

Both buildings were evacuated within minutes of the explosion. Several employees had suffered cuts and scrapes, and one juror's arm was seriously injured. Tragically, a district court file clerk's fourteen-month old daughter died in the day-care center in the Federal Building; a law clerk's child who was also at the center spent weeks in intensive care, but is now at home. In the hours after the bombing, Dennis remembers people trying to help the injured. "Our own court personnel were over there [at the Murrah building] helping recover people, getting them to ambulances. It makes you proud."

Seven days later, on April 25, 1995, the U.S. Courthouse and the Old Post Office Building were open for business. "GSA was superb," said Dennis. "They were there on the 19th with a command staff and cleanup crews ready to go. They had the windows boarded up that night." Crews worked around the clock and throughout the weekend to clear the debris and repair the damage.

According to Administrative Office staff, the GSA spent \$1.05 million on debris removal, carting away 27 dumpsters filled with trash from the two court buildings.

While the courthouse was being repaired, Russell extended the statute of limitations on filings. Meanwhile, help poured in from around the country. Russell accepted an offer of a team from the AO. Ralph DeLoach, clerk of court for the District of Kansas, Joyce Stanley from the AO's Human Resources Division, Rodgers Stewart from the AO's Space and Facilities Division, and Lori Rini from the AO's District Court Administration Division were on site by April 21. They helped organize counseling for employees, coordinate court administration activities, and evaluate facilities and equipment needs. DeLoach, who had helped the Topeka, Kansas, district court staff deal with the aftermath of a 1993 attack, immediately enlisted the aid of psychologists and law enforcement personnel for a Saturday morning counseling session for




Offices at the U.S. Courthouse were damaged in the blast.



The United States Courthouse in Oklahoma City, Oklahoma

Oklahoma City court staff. "As soon as possible," said DeLoach, "it's important for people to know what to expect. They should know, for example, that it's normal for survivors to experience guilt feelings or to have trouble sleeping. And it's also important that they hear from law enforcement officials about what actually happened. There is always some confusion, and they need to know the current status."

Chief Judge Stephanie K. Seymour (10th Cir.) sent a team of procurement, computer, and telecommunication specialists, lead by circuit executive Robert L. Hoecker, who arrived on April 24. "We've had assistance from courts across the country including Colorado, the Eastern and Northern Districts of Oklahoma, the Districts of Kansas, Mexico and Utah, and the Northern District of Texas," said Dennis. "They've sent people to pitch in and handle filings, intake, docketing, jury matters—just about anything we need. Everyone has been very, very helpful."

These are difficult days for the court's employees. "People are still traumatized," said Russell, "but in the main, everyone is back on the job." 

Security Review Slated for Courts

The U.S. Marshals Service has been directed by Attorney General Reno to conduct a security review of government facilities, which should be completed within 60 days. Congress also is expected to conduct its own review of federal building security in the weeks ahead.

The day after the Oklahoma City bombing, Administrative Office Director L. Ralph Mecham directed staff to prepare a request for additional funding for security, which the Executive Committee of the Judicial Conference endorsed. On May 2, 1995, President Clinton asked Congress, through the 1995 Terrorism Supplemental Appropriation, to earmark approximately \$140 million in emergency funding to meet needs created by the bombing and to implement his new anti-terrorism initiative, \$10.4 million of which would be for court security.

"The magnitude of the tragedy in Oklahoma demands that we provide these emergency funds as quickly as possible," the President said.

The courts' supplemental request, if approved, would fund replacements for outmoded magnetometers and x-ray equipment, security equipment and staff to conduct entry screening, entry barriers, and approximately 400 court security officer positions at inadequately staffed facilities. Included in the President's supplemental request is \$71.45 million for Justice Department antiterrorism activities.

The Administrative Office also is working with the appropriate court advisory organizations and the Committee on Security, Space and Facilities to develop an appropriate plan for dealing with any future large-scale disasters.

AO Director's Awards Recognize Outstanding Judiciary Employees

Two clerks of court and a deputy circuit executive are the recipients of the 1995 Director's Awards for Outstanding Leadership, while a team of four U.S. probation officers in the First Circuit Court of Appeals have received the 1995 Director's Award for Administrative Excellence. The recipients were recommended by a panel composed of Judge H. Robert Mayer (Fed. Cir.), Judge Thomas P. Jackson (D. D.C.), and Myra Howze Shiplett, the Administrative Office's assistant director for Human Resources and Statistics. There were 18 nominations for the Administrative Excellence Award and 22 nominations for the Outstanding Leadership

Award. AO Director L. Ralph Mecham praised the recipients, saying, "Their endeavors demonstrate the innovative spirit and commitment to quality and service that have become the hallmark of the federal Judiciary."

1995 Director's Award for Outstanding Leadership

The recipients of the 1995 Director's Award for Outstanding Leadership were recognized for their long-term contributions to managerial effectiveness and improved administration within the federal Judiciary. The award is given to Judiciary managers who have made outstanding sustained contributions to increase program effectiveness and/or to reduce costs in administration.

Michael W. Dobbins, clerk of court for the U.S. Bankruptcy Court for the Northern District of Georgia, was honored for his initiatives in team training, in the court's participation as a pilot for the decentralized budget and for a pro-active approach to identifying creative and efficient ways to cope with reduced staffing. He also was recognized for the many improvements he has made in service to the public and to the bar. He was been a member of the court family since 1986.

Terry Nafisi, deputy circuit executive for the U.S. Court of Appeals for the Ninth Circuit, was honored for her leadership in a wide range of local, regional, and national projects including long-range planning for the Ninth Circuit, the provision of group long-term disability program and retirement counseling services for court employees in the circuit, and for the development of the Executive Team Building workshops, case management workshops, and the Circuit's Task Force on Tribal Courts. Nafisi has been with the court for 12 years.

Robert H. Shemwell, clerk of court for the U.S. District Court for



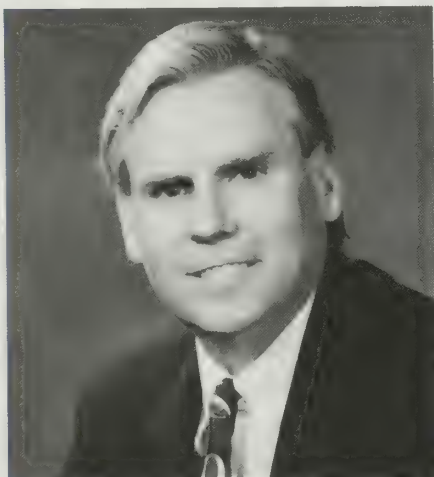
Robert H. Shemwell



Robert C. Mercier



Julius H. Britto



Michael W. Dobbins

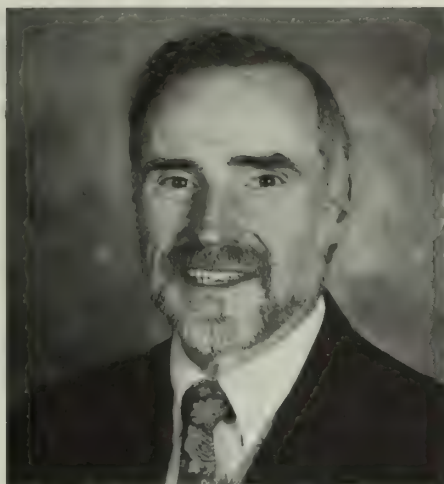


Terry Nafisi

the Western District of Louisiana since 1975, was honored for his successful automation of the clerk's office, which now features automated civil and criminal dockets, jury management, and financial systems. Under his direction, the district piloted and developed a system of in-house microfilming that allows simultaneous access to court records at five locations throughout the district. In addition, Shemwell serves as part-time magistrate judge, relieving both district judges and magistrate judges of many administrative details. He has written guides for practitioners, assisted in the drafting of uniform Louisiana local rules, and he serves as a reporter for the Civil Justice Reform Act Group for the district.

1995 Director's Award for Administrative Excellence

The 1995 Director's Award for Administrative Excellence has been given to the Drug Abuse Treatment specialists team of **Robert C. Mercier**, U.S. probation officer, U.S. District Court for the District of Massachusetts; **Julius H. Britto**, U.S. pro-




Vincent J. Frost



Gardner Spencer

bation officer, U.S. District Court for the District of Rhode Island; **Vincent J. Frost**, U.S. probation officer, U.S. District Court for the District of Maine; and **Gardner Spencer**, U.S. probation officer, U.S. District Court for the District of New Hampshire.

The Award for Administrative Excellence honors employees of the federal courts for outstanding achievements in improving the administration of the federal Judiciary. The probation officers were recognized for initiating combined contracting for drug treatment services in the First Circuit, which includes the districts of Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico.

With the combined contracting, it was estimated that in fiscal year 1994 the overall savings to the government was \$330,000. The savings were realized not only in administrative work hours, but also for offenders who found it more convenient and cost effective to cross district boundaries to receive services than to participate in a program within their own district. 

Caseload of State Courts Across the Nation on the Decline

The caseload is going down in state courts nationwide, with the total caseload dipping 6 percent since 1991. This is according to *Examining the Work of the State Courts, 1993: A National Perspective from the Court Statistics Project*, published by the National Center for State Courts. However, the real news may not be in overall numbers, but how that caseload is changing.

In 1993, nearly 90 million cases were filed in state courts. Of these, 5.6 million were traffic cases, 14.6 million were civil, 13 million were criminal, 4.5 million were domestic

and 1.7 million were juvenile.

Since 1984, the areas of rapid growth have been in non-traffic cases. Civil and criminal caseloads have grown 30 percent, juvenile 40 percent, and domestic relations cases 60 percent. By 1993, civil, criminal, and juvenile cases made up nearly 40 percent of the total caseload. Meanwhile, the overall national state court caseload has declined since 1991. The reason: declining traffic cases. Once classified as criminal cases, courts have moved over the last ten years to decriminalize less-serious traffic cases and to move this

caseload to an executive branch agency. In some states, traffic offenses have been re-classified as civil cases.

Much like the federal courts, civil cases account for the majority of cases in state courts. In 1993, state courts reported 14.6 million civil cases filed (excluding domestic relations). For the first time in ten years, total civil filings declined, falling 2 percent from 1992 to 1993. Contract filings have declined sharply since 1990, with filings in 1993 37 percent less than in 1990.

See *Caseload* on page 7

Courts Improvement Bill Transmitted to Congress

On behalf of the Judicial Conference, the director of the Administrative Office, L. Ralph Mecham, transmitted to Congress on March 28 a draft of the Federal Courts Improvement Act of 1995. The draft legislation, which has not yet been introduced in Congress, would make improvements in the operation and administration of the federal courts.

The transmittal letter accompanying the proposed legislation noted that, "Many of the bill's provisions will have a significant impact on both the criminal and civil operations of the courts and will enhance the delivery of justice in the federal system." And while it was recognized that some of the provisions may be viewed as controversial, "the balance of the provisions address administrative, financial, personnel, organizational, and technical changes that are necessary for the courts and their supporting agencies."

The following are among the draft bill's provisions:

Criminal Law

- Provides federal authority for probation and pretrial services officers to carry firearms, if approved by the appropriate district court. In some jurisdictions, state law prohibits or limits officers from carrying weapons, even where court approval has been given.

Judicial Financial Administration

- Authorizes reimbursement of the judicial branch, out of funds in the Department of Justice's and the Department of the Treasury's Asset Forfeiture Fund for certain expenses incurred by the judicial branch in connection with adjudications of asset forfeitures, the provision of defense services, and the furnishing

of home detention services and equipment.

- Amends 28 U.S.C. § 1914 to increase the civil filing fee from \$120 to \$150, as recommended by the Judicial Conference, with the first \$90 (rather than \$60) of each fee to be deposited into a special treasury fund available to offset funds appropriated for the operation and maintenance of the courts. Civil filing fees were last increased in 1986, from \$60 to \$120.

Judicial Process Improvements

- Authorizes magistrate judges to try petty offense cases without the consent of the defendants, and to try misdemeanor cases upon either written or oral consent of the defendant on the record.

- Repeals in-state plaintiff diversity jurisdiction.

- Amends 28 U.S.C. § 1332 relating to diversity jurisdiction to raise the jurisdictional amount from \$50,000 to \$75,000 and to index such amount for inflation to be adjusted at the end of each year evenly divisible by five, an alternative recommendation of the Federal Courts Study Committee.

Judiciary Personnel Administration, Benefits, and Protections

- Changes the "Rule of 80" and service requirements for retirement to senior status by justices and Article III judges by authorizing retirement to senior status as early as age 60 so long as the combined age and years of service equals 80.

- Revises the senior judge work certification procedures of 28 U.S.C. § 371(f) by providing that justices and judges who are not certified in one year may perform work in a subsequent year, then attribute the subsequent work to the earlier year in order to satisfy the certification requirement.

- Changes the date temporary judgeships created under P.L. 101-650 begin, from the date of enactment of the bill to the 5-year period beginning with the confirmation date of the judge filling the temporary position.

- Amends Title 28 of the U.S. Code to authorize the carrying of firearms by judicial officers.

Federal Courts Study Committee Recommendations

- Repeals legislation (§ 140), barring annual cost-of-living adjustments in pay for federal judges, except as specifically authorized by Congress.

- Changes the system for selecting the chief judge of the Court of International Trade to conform to the modified seniority system applicable to every other Article III court.

Criminal Justice Act Amendments

- As recommended by the Judicial Conference, requires that a federal public defender organization or community defender organization be established in all judicial districts or combination of districts in which more than 200 persons annually require the appointment of counsel or where the Judicial Conference determines that such an organization would be cost effective or the interests of effective representation otherwise require establishment of such an office.

Places of Holding Court

- Implements the proposal of the Judicial Conference to establish the Middletown-Wallkill area of Orange County, New York as a place of holding court in the Southern District of New York.

MAY

- 25 Thursday**
Federal Circuit Conference
- 25-27 Thursday-Saturday**
Eleventh Circuit Conference
- 28-31 Sunday-Wednesday**
First Circuit Conference
- 31-June 2 Wednesday-Friday**
Committee on Criminal Law
- 31-June 2 Wednesday-Friday**
Workshop for Bankruptcy Judges

JUNE

- 5-6 Monday-Tuesday**
Committee on Court Administration and Case Management
- 7-8 Wednesday-Thursday**
Committee on Judicial Resources
- 8-9 Thursday-Friday**
Committee on the Administration of the Bankruptcy System
- 9-10 Friday-Saturday**
Second Circuit Conference
- 12-13 Monday-Tuesday**
Committee on the Administration of the Magistrate Judges System
- 12-13 Monday-Tuesday**
Committee on Security, Space and Facilities
- 14-16 Wednesday-Friday**
Workshop for Magistrate Judges of the 1st, 3d, and 4th Circuits
- 18-20 Sunday-Tuesday**
Committee on Defender Services
- 19-20 Monday-Tuesday**
Committee on Automation and Technology
- 22-23 Thursday-Friday**
Committee on Federal-State Jurisdiction
- 25-26 Friday-Saturday**
Committee on the Judicial Branch
- 28-July 1 Wednesday-Saturday**
Sixth Circuit Conference
- 29-July 1 Thursday-Saturday**
Fourth Circuit Conference

CHIEF PROBATION OFFICER

The position is located in Boston with divisional offices in Plymouth, Springfield and Worcester, Massachusetts. The District of Massachusetts serves the entire state with 13 judges, 4 senior judges, and 7 full-time magistrate judges. The incumbent is responsible for the district court, the Judicial Conference of the United States, the Administrative Office of the U.S. Courts, and the Parole Commission for probation and parole programs in the judicial district. Grade: JSP 14-17. Send letter of application and resume to Robert J. Smith, Jr., Clerk of Court, U.S. District Court, 707 John W. McCormack Post Office & Courthouse Building, 90 Devonshire Street, Boston, MA 02109, no later than **July 15, 1995**. The person selected may be required to undergo a full FBI background investigation.

EQUAL OPPORTUNITY EMPLOYERS

Russians Devise, Draft, and Implement Bankruptcy System

Building on virtually no tradition, the Russians are trying to devise, draft, implement—and now revise and rewrite—nascent bankruptcy and business reorganization laws. In a period of four years, the Russians are trying to accomplish what the West has done in over 200 years.

According to U.S. Bankruptcy Judge Sidney B. Brooks (D. Col.), a member of the Judicial Conference's Committee on International Judicial Relations, the Russians deserve an "A" for effort, a "B" for commitment and theory, a "C" for design and development, but an "F" for execution. Brooks recently attended a conference in Moscow where he and others worked on a new draft of the Russian bankruptcy laws.

"We found that the Russian bankruptcy code is not user friendly. Impediments to its use abound," said Brooks. For example, only businesses can file for bankruptcy or reorganization. Individual consumers, farmers, certain government agencies, utilities, professional corporations, co-ops, and others cannot file. Less than one-half of the bankruptcy petitions filed thus far in Russia have qualified. Most were rejected by the court because the enterprises were still ostensibly solvent.

Russians have six different chapters, or bankruptcy and reorganization procedures, to choose from. Each has its own set of characteristics, rights, obligations, and practices. There is little uniformity or continuity among the chapters. "The Russian bankruptcy law is sometimes inconsistent, usually confusing, and often ineffective," said Brooks.

Another troublesome aspect of the Russian law is that the highest priority claims are tort and personal injury claims, followed by employee compensation and taxes. Priority employee claims are nearly unlimited.



Judge Sidney B. Brooks

Otherwise, there are no specific provisions dealing with classifying claims, or treating and fixing undersecured claims, or resolving claims' disputes. This largely eliminates one of a bankruptcy's primary purposes—an orderly, prompt, and predictable liquidation of failed businesses.

Brooks and others present at the Moscow conference explored a number of legislative and statutory rem-

edies to the deficiencies in the current Russian bankruptcy law. Some of the recommendations were broad, calling for reforms such as the implementation of a more simplified unitary bankruptcy code system rather than the current six disparate procedures. Other recommendations were more specific in nature. For instance, one recommendation called for the allowance for interest accrual on creditor claims, to be paid before equity, even if in a subordinated position—a step that is particularly important in a country with high inflation.

"This list of recommendations can help lay the groundwork for a strong and effective bankruptcy system in Russia," said Brooks. "And having such a system in place will make an invaluable contribution to Russia's unprecedented transformation from a centrally controlled, socialist economy to a free market economy based on private property, competition, and entrepreneurship."


Caseload continued from page 5

In 1993, 38 percent of the total civil filings, over 4.5 million cases, were domestic relations filings. The rate of growth slowed from 1992 to 1993, but it had grown 37 percent between 1988 and 1993. Divorce cases makeup 35 percent of the domestic relations cases, with support/custody filings the second largest at 22 percent. Domestic violence cases, which grew 73 percent between 1989 and 1993, account for 16 percent of the filings.

The center's report found that, overall, 7.6 percent of the civil filings are disposed by trial and of those only 1.2 percent by jury. The majority of criminal cases were

resolved by either a guilty plea or a dismissal. Only 7 percent were disposed of by trial in 1993. However, only nine of 44 states reporting caseload rates cleared 100 percent of their criminal caseload for a 3-year period.

In 1993, more than 13 million criminal cases were filed in state courts, a decline of about 2 percent from 1992. The 32 state general jurisdiction courts reported a similar decline in felony filings after a nine year period of rapid increases.

For a copy of the center's report, contact Carrie Clay, National Center for State Courts, P.O. Box 8798, Williamsburg, Virginia, 23187-8798 or call (804) 259-1812. 

JUDICIAL MILESTONES

Appointed: William G. Connelly, as U.S. Magistrate Judge, U.S. District Court for the District of Maryland, March 31.

Appointed: David Folsom, as U.S. District Judge, U.S. District Court for the Eastern District of Texas, April 14.

Appointed: Adlai S. Hardin Jr., as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of New York, March 9.

Appointed: Robert Levy, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of New York, March 20.

Appointed: Frank J. Lynch Jr., as U.S. Magistrate Judge, U.S. District Court for the Southern District of Florida, April 1.

Appointed: F. H. McCarthy, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Oklahoma, April 10.

Appointed: Karen Nelson Moore, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Sixth Circuit, March 29.

Appointed: Lisa Margaret Smith, as U.S. Magistrate Judge, U.S. District Court for the Southern District of New York, March 20.

Appointed: Theresa L. Springmann, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Indiana, March 23.

Appointed: Lacy Thornburg, as U.S. District Judge, U.S. District Court for the Western District of North Carolina, March 21.

Appointed: Joseph C. Wilkinson Jr., as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Louisiana, March 27.

Elevated: Judge Charles P. Sifton, to Chief Judge, U.S. District Court for the Eastern District of New York, succeeding Chief Judge Thomas C. Platt, Jr., April 1.

Elevated: Judge G. Thomas Van Bebber, to Chief Judge, U.S. District Court for the District of Kansas, succeeding Chief Judge Patrick F. Kelly, April 1.

Elevated: Judge George W. White, to Chief Judge, U.S. District Court for the Northern District of Ohio, succeeding Chief Judge Thomas D. Lambros, February 10.

Retired: Magistrate Judge Frederic Atwood, U.S. District Court for the Eastern District of New York, April 20.

Retired: Magistrate Judge Harry T. Herdman, U.S. District Court for the Southern District of Ohio, April 30.

Deceased: Senior Judge George C. Edwards Jr., U.S. Court of Appeals for the Sixth Circuit, April 8.

Deceased: Judge Harold M. Fong, U.S. District Court for the District of Hawaii, April 20.

Deceased: Senior Judge George E. MacKinnon, U.S. Court of Appeals for the District of Columbia, May 1.

Deceased: Senior Judge Harold L. Ryan, U.S. District Court for the District of Idaho, April 10.

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JUDICIAL BOXSCORE

As of May 1, 1995

Courts of Appeals	
Vacancies	16
Nominees	7
District Courts	
Vacancies	51
Nominees	15
Court of International Trade	
Vacancies	2
Nominees	0
Courts with "Judicial Emergencies"	24

Amendments Proposed to Balance Cocaine Sentencing Inequities

Last month, the U.S. Sentencing Commission proposed, by a 4-3 vote, an amendment to the federal sentencing guidelines that would ease the inequities between sentences for the same amount of crack cocaine and powder cocaine. Currently, it takes 100 times as much powder cocaine as crack cocaine to trigger the mandatory minimum penalties. Critics, and a commission study entitled *Cocaine and Federal Sentencing Policy*, have contended that the unequal ratio cannot be justified.

The amendment is one of several to the federal sentencing guidelines forwarded to Congress on May 1, in the commission's annual guideline amendment process. The amendments will take effect November 1, unless Congress rejects them. Before sending the amendments to Congress, the commission invited comment from the Judicial Conference's Committee on Criminal Law, from federal judges, probation officers, and members of the bar, among others. It received more than 10,000 letters from the public concerning the proposed amendments.

Under provisions of P.L. 103-322, the 1994 crime bill, the commission has to report on the differing federal penalties for powder and crack cocaine offenses and recommend retention or modification of these differences. The distinction between sentences for powder and crack cocaine possession was made in 1986 and 1988, when Congress set mandatory minimum sentences that were longer for crack offenses. The sentencing guidelines enacted in 1987 incorporated the distinction. For example, a first-time offender who distributes 500 grams of powder cocaine receives a five-year mandatory minimum sentence—the

same sentence as the first-time offender who distributes five grams of crack.

The proposed amendment makes no distinction between crack cocaine and powder cocaine in sentencing, while it also increases guideline penalties for the use of weapons and allows for a departure for bodily injuries occurring during drug offenses. In addition, partly in reaction to the increased involvement of children in drug trafficking, the commission proposes to adjust the guidelines upward for any offense in which juveniles are used.

With the change in quantity ratio, the offense level for simple possession of crack cocaine would also change. To reflect changes in the sentencing guidelines, the commission has recommended that Congress make similar changes to existing mandatory minimum penalties contained in federal law. The commission will determine this summer if these cocaine amendments apply retroactively.

Of the other amendments proposed by the commission, while some come in response to congressional directives contained in the 1994 crime bill, others involve money laundering, marijuana and other drug offenses, and supervised release following confinement.

Key amendments passed by the commission include:

Terrorism: Provides major increases in penalties for crimes committed with the intention of promoting international terrorism.

Passport Violations: Increases the maximum penalties for passport and visa fraud offenses for entry into the United States for the purpose of perpetrating additional crime.

Minors Involved in Crime: Provides a significant increase for offenses involving the use of a minor to

commit a crime.

Civil Rights and Hate Crimes:

Answers the congressional call to increase penalties for hate crimes by consolidating and simplifying the guidelines for civil rights offenses.

Drugs in Prison: Provides increased penalties for possession or distribution of illegal drugs in prison.

Safety Valve: Provides full implementation of the so-called safety valve for low-level, non-violent drug offenders, an amendment that had been put in place under emergency procedures ten days after the President signed the 1994 crime bill, as required by Congress. In its general revision of the drug guidelines and in response to a congressional request, the commission adjusted the safety valve provision for certain qualifying defendants by lowering the guideline range approximately 25 percent.

Money Laundering: Provides increased penalties for the most serious forms of money laundering while reducing those for some less serious forms of the offense to correct the broad applications of the money laundering statute.

Marijuana: Rationalizes the basis for calculating penalties for marijuana growing offenses; each plant will be considered equivalent to 100 grams instead of the 1,000 grams that constitute the mandatory minimum requirement for cases involving 50 or more marijuana plants.

Supervised Release Following

Confinement: More clearly explains possible departures from the supervised release guidelines. Additional flexibility in this area had been requested by the Judicial Conference's Committee on Criminal Law.

Judge R. Lanier Anderson III: A Guide for Judicial Conduct

Judge R. Lanier Anderson III was nominated in 1979 to the U.S. Court of Appeals for the Fifth Circuit (redesignated the Eleventh Circuit in 1981). He was appointed to the Judicial Conference Committee on Codes of Conduct in 1987 and has been chairman of the committee since 1992.

Q: The Codes of Conduct Committee may be one of the less visible committees of the Judicial Conference. What is its role and function?

A: The Codes of Conduct Committee is the committee authorized by the Judicial Conference to give advice on ethical questions that arise under the codes of conduct and the Ethics Reform Act and related regulations. The codes of conduct contain general ethical standards on avoiding impropriety and the appearance of impropriety, while the Ethics Reform Act provisions regulate acceptance of gifts and honoraria as well as outside earnings and employment activities. In an average year, the committee and its staff receive close to 100 requests for a written advisory opinion and over 200 telephonic inquiries seeking informal guidance. Most inquiries are from judges, who often seek advice on when they must recuse themselves because of financial or family interests. We also receive requests for advice from judicial employees, for example, on whether certain outside business-related or political activities are proper.

Q: What about members of the public? Does your committee provide advice to them as to whether a judge has acted ethically?

A: No, the committee's jurisdiction is limited to advising judges and judicial employees about the ethical propriety of their own activities. We are not an enforcement committee, and we do not accept or process complaints from the public about judges and judicial employees. I should add that my committee also does not have responsibility for reviewing and filing the annual financial disclosure reports; that function is handled by the Financial Disclosure Committee, which is chaired by Judge Frank J. Magill (8th Cir.).

"The committee's conversations with hundreds of judges leads us to believe that judges are increasingly sensitive to the canons and their ethical obligations. There seems to be widespread compliance with the letter and spirit of the canons."

Q: I know the Codes of Conduct Committee has been working for some time on a new consolidated code of conduct for judicial employees, which was recently circulated for public comment. Can you tell us what the committee is doing and why?

A: The committee reviewed the six existing employee codes of conduct to see whether we could consolidate them into a single code because the committee believed that one code would be more efficient and accessible. We noted in that review that the six existing codes are expressly applicable only to the named employees, for example clerks and deputy clerks, probation and pretrial services officers, circuit executives, staff attorneys, federal public defenders, law clerks, and a few designated employees of the AO, although oth-

ers, such as judges' secretaries, would be covered derivatively.

The committee has drafted a proposal that consolidates five of the six existing codes into one consolidated code and that extends code coverage to all judicial employees (other than those specifically excluded from coverage). The consolidated code incorporates revisions recently made to the judges' code and streamlines and updates other provisions. The proposal was circulated for public comment last fall, and then revised and circulated for a second round of comments

this spring. We hope to review any additional comments this summer and make a recommendation to the September 1995 Judicial Conference for adoption of a final consolidated code. I should add that we do not plan to include federal public defenders and their employees in the consolidated code. Instead, we propose to maintain a separate defender code but to revise it to correspond to the consolidated code. This spring, the committee also circulated for public comment proposed revisions to the defender code.

Q: How does the proposed consolidated code differ from the existing employee codes?

A: There are several important differences. First, the new code will extend to virtually all

judicial employees, including many who are not expressly covered by an existing code. Second, the consolidated code contains a new conflict of interest provision that generally restricts employees from performing official duties in areas where they have a personal or financial interest of the sort that would cause reasonable people to question whether they could perform their official duties impartially. The new provision is based on existing code principles but provides more specific guidance to employees about avoiding obvious conflicts of interest. Third, several provisions relating to employees' activities outside of the office have been revised and tailored more narrowly to ensure that the code does not unduly infringe on employees' involvement in civic, social, and related pursuits.

The committee believes that the consolidated code will be a useful and more specific guide for judicial employees, and also that the adoption process, with its circulations for comment, will serve an important educational role.

Q: What general guidance can you provide to judges and judicial employees who are asked to participate in political activities?

A: Judges, of course, are strictly prohibited from involvement in political activities by Canon 7 of the Code of Conduct for United States Judges. Judicial employees also are generally restricted from partisan activities but most may engage in nonpartisan activities; the consolidated code proposes to retain this general approach. We have received a number of questions in this area recently, particularly in the wake of the 1993 Hatch Act Amendments, which relaxed the restrictions on partisan political activities by executive branch employees. The Hatch Act does not itself apply to the



Judge R. Lanier Anderson III

Judiciary, but the committee considered a similar relaxation of the existing judicial standards to allow judicial employees fuller participation in political affairs. Because of the singular role of the Judiciary, the committee has serious concerns about the need to protect the integrity of the Judiciary from association with partisan politics and from the appearance of partiality and lack of objectivity that could follow, which led us to recommend no relaxation of these provisions. Judicial employees, therefore, should continue to adhere to existing restrictions on involvement in political activities.


Q: Some employees find it difficult to obtain information about ethics requirements. Can you describe what materials are available?

A: Almost all ethics-related materials in the Judiciary are published in Volume II of the *Guide to Judiciary Policies and Procedures*. This volume contains all of the codes of conduct (Chapters I and II); excerpts of relevant statutory provisions and the regulations on gifts and on outside earnings and employment (Chapter VI); and published advisory opinions (Chapter IV). Two years ago, the committee compiled a Compen-

dium of Selected Opinions summarizing the advice given by the committee over the past 20 years; the Compendium is also published as Chapter V of Volume II and provides useful guidance on a range of important issues covered by the canons and the Ethics Reform Act (relating to restrictions on gifts and honoraria and outside earned income). The compendium's Table of Contents facilitates location of relevant materials. In talking with judges across the country, the committee has noted that many judges' copies of Volume II have not been kept up to date, thus seriously inconveniencing judges when they consult it. As part of our educational efforts, the committee is suggesting to judges that they keep their copy of Volume II close at hand and that they urge their clerical support to keep it up-to-date by filing all transmittals from the AO promptly.

Judges and judicial employees who have ethical questions are encouraged to consult these materials for guidance, and employees should also consult with their supervisors. If questions remain, judges and judicial employees may contact their circuit representative on the committee or the committee's counsel in the AO General Counsel's Office for informal guidance, or may request a confidential advisory opinion from the committee itself.

The committee's conversations with hundreds of judges leads us to believe that judges are increasingly sensitive to the canons and their ethical obligations. There seems to be widespread compliance with the letter and spirit of the canons.

In this era of increasing public scrutiny and even suspicion of all human institutions, it is more important than ever for judges to be sensitive to the provisions of the canons. For that reason, the committee is taking steps to enhance its educational efforts both for judges and for judicial employees. 

Congressional Republicans Unveil Seven-year Budget Blueprint

Last month Republicans in the House and Senate unveiled their respective budget proposals for fiscal year 1996 through 2002. The Senate plans to balance the federal budget by the year 2002 through reforms and numerous reductions. The House proposes not only to balance the budget by the year 2002, but also calls for a tax cut. Among the provisions contained in the Senate spending plan is a freeze on the pay of federal judges, members of Congress, and Senior Executive Service employees until the year 2002. Rank and file federal workers would receive current law pay adjustments.

With regard to the Administration of Justice budget function, which includes the Judiciary, total spending under the Senate proposal would increase from \$18.5 billion in FY 95 to \$19.9 billion FY 96. This would reduce funding for this function in FY 96 by \$2 billion, or 9 percent below the President's request. The House

proposal for this budget function provides only \$17.8 billion for FY 96, a 4 percent reduction below the FY 95 level and a 19 percent reduction from the President's request.

The Judicial Conference, its Budget Committee, and Administrative Office staff will continue to monitor closely the budget proposal while informing Congress of the unique nature of the demands and responsibilities facing the federal courts.

Among the provisions in the Republican Senate budget are proposals that would do the following:

- Impose a 25 percent reduction in construction and acquisition of federal buildings.
- Impose a 15 percent reduction in overhead, including printing, utilities, rent, communication, travel, and certain contracts.
- Charge fees for parking at federal buildings.
- Change the basis of federal retiree pensions from the average of

the top three highest years to the average of the five highest annual salaries.

- Assume a 15 percent reduction in Senate committee staff, a 12.5 percent reduction in Senate support staff, and a 25 percent reduction in the Government Accounting Office.

Among the provisions contained in the House Republican budget are proposals that would do the following:

- Impose a 5-year moratorium on federal building construction and a 7-year moratorium on the acquisition of buildings.
- Increase civilian employee contributions to the retirement trust fund by 2.5 percent of salary.
- Eliminate funding for Death Penalty Resource Centers.
- Phase out funding for the Legal Services Corporation.
- Terminate the State Justice Institute and the U.S. Parole Commission.

THE THIRD BRANCH

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Director Mecham Marks Tenth Anniversary at AO



L. Ralph Mecham was appointed director of the Administrative Office on July 15, 1985. As he approaches his tenth anniversary at the AO, Mecham was interviewed by the staff of The Third Branch.

Q: Did you begin your tenure as director ten years ago with particular goals in mind?

A: I certainly began with an awareness of certain issues and problems that needed immedi-

ate resolution. To begin with, there was the problem of getting enough funds to run the Judiciary. Congress had piled on the work and added to court jurisdiction but had not provided enough funds or space. Today this is called unfunded mandates, and it is a problem we continue to experience.

Judges' compensation was continuing to drop in real dollar terms because the President and Congress had not approved COLAs on an annual basis, so increased pay

FEDERAL DEPOSITORY

for judges was a high priority. Relations with the GSA on building needs also were exceptionally poor.

Chief Justice Burger had been working for 17 years to get a new building in Washington to house federal judicial administrators. These efforts had died in the Senate in 1984, and my job was to get a new building on Capitol Hill. The Judiciary agencies were housed in at least 10 buildings at the time, and it was an administrative nightmare. The Judiciary was decades behind many state courts and nearly all large law firms in the availability and use of automation. Trying to solve these challenges and problems became my principal objective along with improving administration of the AO, where happily I found many good people.

Q: How was the AO viewed by judges and court staff when you became director?

A: Fairly or unfairly, there was widespread dissatisfaction with the Administrative Office. In fact, soon after I arrived Chief Justice Burger appointed a committee of four outstanding judges to study the AO and to provide advice on improving the agency. While surveying

See Interview on page 9

INSIDE

Judiciary Supports Voluntary Arbitration
Long Range Plan Recommendations Adopted
Ninth Circuit Split Proposed

2
6
8

Federal Judiciary Supports Voluntary Arbitration Legislation

The House Judiciary Committee's Subcommittee on Intellectual Property and Judicial Administration last month approved the following bills for full committee action:

- H.R. 1443, which contains a provision requiring all district courts to establish rules allowing arbitration in civil actions;

- H.R. 1145, which amends Rule 30 of the Federal Rules of Civil Procedure; and

Ill.), chair of the Judicial Conference's Committee on Court Administration and Case Management, and Chief Judge J. Phil Gilbert (S. D. Ill.) both testified on issues raised by H.R. 1443, the Court Arbitration Authorization Act of 1995. The full House committee marked up H.R. 1145, H.R. 1170, S. 532 and S. 464 in early June.

Gilbert urged the subcommittee to adopt a provision of H.R. 1443,

Provisions of H.R. 1443 also deal with arbitration. In her testimony, Williams told the subcommittee that the expansion of court-annexed arbitration programs should be voluntary, but not mandatory.

"The [Judicial] Conference believes that the decision of adopting a particular court-annexed arbitration program should be left to the individual district courts, rather than mandating an across-the-board requirement," said Williams.

She noted that the CJRA required each district court to develop a civil justice cost and delay reduction plan that considers the specific needs and circumstances of each court, its litigants, and the litigants' attorneys. In adopting plans, 80 of the 94 district courts have included some form of alternative dispute resolution.

According to Williams, there is some concern that the mandatory arbitration programs created under H.R. 1443 could actually add to expense and delay by requiring all litigants, regardless of the circumstances surrounding the case, to go through this extra first step before proceeding to a traditional jury trial.

"The Conference's view is that well-run voluntary programs will attract participants and provide an effective form of alternative dispute resolution without demanding that all litigants participate regardless of their circumstances," Williams said. "Therefore, the Conference believes that the discretion to adopt court-annexed arbitration programs should be limited to voluntary programs." Gilbert told the subcommittee that he did not agree with the Conference and expressed his support for the arbitration legislation. Former Federal Judicial Center Director William W. Schwarzer had taken a similar position at a congressional hearing last year when



(L to R) Chief Judge J. Phil Gilbert (S.D. Ill.) and Judge Ann Claire Williams (N.D. Ill.) testified before a House subcommittee.

- H.R. 1170, which provides that cases challenging the constitutionality of measures passed by state referendum be heard by a 3-judge court.

The subcommittee also reported out two Senate bills referred to the House Judiciary Committee: S. 532, which clarifies the rules governing venue in multi-defendant cases, and S. 464, which amends the Civil Justice Reform Act of 1990 (CJRA) to make the reporting deadlines for studies conducted in federal court demonstration districts consistent with the deadlines for pilot districts.


The subcommittee previously held a hearing on H.R. 1443, H.R. 1445, S. 464, and S. 532 at which Judge Ann Claire Williams (N.D.

changing the controlling date for filling vacancies in federal district courts to five years from the judge's confirmation date rather than the December 31, 1995, date established by the Federal Judgeship Act of 1990. Gilbert noted that "With the temporary judgeships language of the law, the first vacancy occurring on or after December 1, 1995 . . . cannot be filled. In my own district the temporary judgeship authorized December 1, 1990, was not filled until October 6, 1994." Changing the controlling date, said Gilbert, "would guarantee that courts with temporary judgeships are provided with a minimum of five years assistance from the position, yet still provide a date certain for the position to lapse."

e also testified in opposition to the Conference's position.

Williams also addressed S. 532, which is supported by the Judicial Conference and H.R. 1445, which would amend Civil Rule 30 to require stenographic recording of oral depositions. The Conference's Advisory Committee on Civil Rules already has expressed its concerns with H.R. 1445, noting that the current rule is cost-effective, facilitates the use of modern technology, and ensures an accurate record. Representative Carlos J. Moorhead (R-CA) indicated in his opening statement that he and former Subcommittee Chair William Hughes J. had introduced legislation in the 103d Congress to stop this rule from taking effect. Moorhead, with fellow

committee members Representatives Patricia Schroeder (D-CO), Howard Coble (R-N.C.) and Charles T. Canady (R-FL) has introduced H.R. 1445 in the 104th Congress.

The Conference has not taken a position on H.R. 1170, which also was reported out of subcommittee. This bill provides that cases challenging the constitutionality of measures passed by state referendum, as well as interlocutory or permanent injunctions sought to restrain the enforcement, operation, or execution of such laws, be heard by a 3-judge court. The bill also provides for direct appeals of these cases to the Supreme Court. In 1970, the Judicial Conference endorsed the repeal of similar sections of the U.S. Code. 

Grassley Asks for Review of Judiciary

Senator Charles E. Grassley, chairman of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, is conducting a review of certain Judiciary programs and operations. He has obtained the assistance of the General Accounting Office (GAO), which is expected to submit a report to Grassley by July 31, 1995. The GAO has written to Judge Rya W. Zobel, director of the Federal Judiciary Center, and L. Ralph Mecham, director of the Administrative Office, informing them of the review.

"The Judiciary enjoys a close working relationship with Senator Grassley," said Mecham. "We will provide him with all the information he has requested to carry out his stewardship responsibilities both to the taxpayers and to the Judiciary."

In a letter last month to Comptroller General Charles Bowsher, Grassley stated "I am looking into whether downsizing the federal Judiciary would result in budgetary savings and whether recent so-called task forces which have examined racial and/or gender bias in the federal courts have acted improperly."

The letter listed seven topics that will be part of the review. They are the following:

- What programs operated by the Administrative Office and the Federal Judicial Center are duplicative or offer substantially the same services?

- How much money is appropriated for each agency and how much money does each agency actually spend per year?

- Assuming that the AO takes
See Review on page 7

Districts with Temporary Judgeships Created in 1990 Judgeship Bill

District	Date Temporary Judgeship Filled	First Eligible Senior After 12/1/95
N.D. New York	February 6, 1992	October 1998
E.D. Pennsylvania	September 29, 1992	March 1996
E.D. Virginia	April 8, 1992	February 1996
W.D. Michigan	June 26, 1992	May 1996
N.D. Ohio	November 15, 1991	January 1996
C.D. Illinois	November 21, 1991	August 1997
S.D. Illinois	October 6, 1994	August 1996
E.D. Missouri	November 20, 1993	October 1996
Nebraska	November 20, 1993	July 2000
E.D. California	February 27, 1992	May 1996
D. Hawaii	October 7, 1994	January 2000
D. Kansas	November 21, 1991	December 2000
N.D. Alabama	May 24, 1991	April 1996

Note: The first vacancy occurring in each of these districts on or after December 1, 1995, cannot be filled.

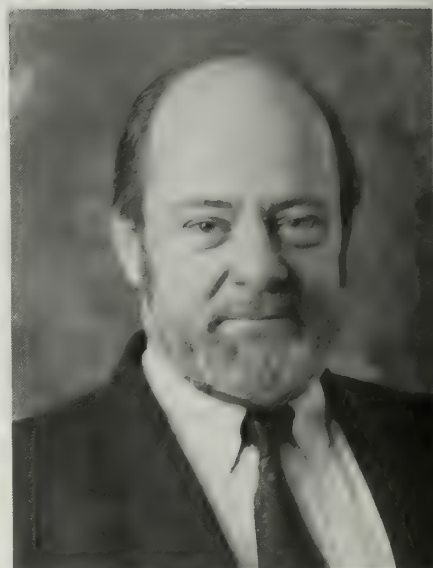
Lee Honored With Administrative Office Director's Award

Clarence A. (Pete) Lee, Jr., Associate Director for Management and Operations at the Administrative Office, is the recipient of the Director's Distinguished Service Award. The award, presented at a meeting of the agency's senior staff last month, is the highest executive level award given by the Administrative Office. Prior to being given to Lee, the Distinguished Service Award had been awarded only twice in the last decade.

Lee, who joined the AO eight years ago, was given the award "in recognition of his exceptional managerial skill and vision, which have made him a force for progress

and innovation, his achievements and contributions in all facets of improving operations, and his remarkable commitment and dedication to service of the Administrative Office of the U.S. Courts and the Federal Judiciary."

AO Director L. Ralph Mecham said, "Pete's commitment to good management, integrity and ethics; his concern for individuals and for institutions; his keen sense of the pragmatic; and his always enterprising vision of how things can be improved make him a leader, a guide, a colleague, and a public servant without peer."



Clarence A. (Pete) Lee, Jr.

Judges Respond in Numbers to Committee Survey

Nearly 900 Article III judges, magistrate judges, and bankruptcy judges responded to a recent questionnaire to determine interest in serving on Judicial Conference committees. "The value of this collection of responses is immeasurable," said Administrative Office Director L. Ralph Mecham, "and we are grateful for the prompt and thorough responses we have received. Not only does this data help us identify those judges interested in serving and on which committee, but also in knowing where strengths may lie that may otherwise be unknown to us. It also gives us a fairly good indication that the judge seeking appointment is able and willing to devote the time committee service often entails."

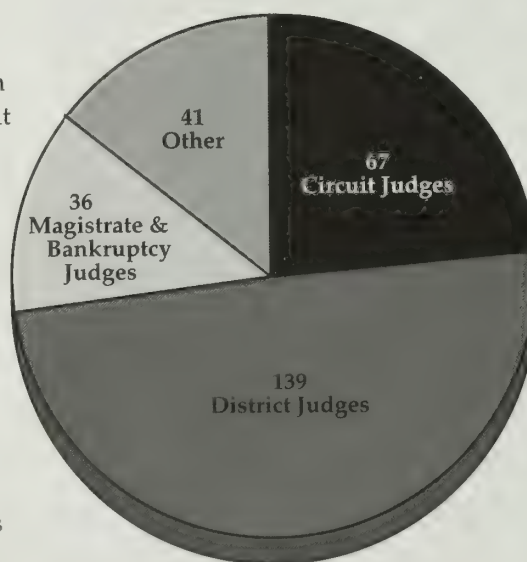
Serving as a member of a Conference committee provides a challenging opportunity for judges to participate in the development of the policies that govern the business of the federal courts and impact the

administration of justice. It is important, however, that the time dedicated to committee service not frustrate the progress of court business. Accordingly, the appointment of new or the reappointment of incumbent committee members

hinges on the condition of a judge's workload.

While there are relatively few vacancies to be filled this year, the collection of responses may be referenced for candidates to fill interim vacancies on the committees and other groups for which the Chief Justice is the appointing authority, such as the Judicial Panel on Multidistrict Litigation. There are 25 Judicial Conference committees and advisory committees, which advise the Conference on a variety of areas, including automation and technology, budget, codes of conduct, court administration and case management, rules, and space and security. Committee size varies from six to as many as 16 members who are appointed for three-year terms, with reappointment possible. Total cumulative committee service on nearly all committees is limited to six years.

Current Committee Composition



Judiciary Urges Change in Make-up of WTO Review Commission



Judge Stanley S. Harris (D. D.C.) testified before the Senate Finance Committee.

The Judicial Conference opposes a provision in a Senate bill that would authorize the President to appoint five federal court of appeals judges to serve on the World Trade Organization (WTO) Dispute Settlement Review Commission.

"Without question, international trade issues are of substantial importance to the United States and will become increasingly so in the future. . .," Judge Stanley S. Harris (D.D.C.) told the Senate Finance Committee at a hearing last month.

"As important, however, is the ability of the federal Judiciary to resolve disputes within its jurisdiction justly, efficiently, and speedily. The Judiciary's challenge to fulfill these responsibilities over the next decade is particularly acute," Harris told the Senate Committee.

Harris testified on behalf of the Judicial Conference. The Senate committee is considering S. 16, the WTO Dispute Settlement Review Commission Act. The legislation is an outgrowth of last year's Uruguay Round Agreement Act, P.L. 103-465, which formed the WTO.

Harris told the Senate committee that the responsibilities under S. 16 of conducting a thorough review of the record and findings of the WTO trade dispute resolution panels

composed of international experts could require a substantial commitment of time by commission members during their five- to eight-year terms.

While the appointment of five federal circuit judges to the commission would appear to divert a relatively small percentage of the existing judgeships, the dramatic increase in the cases per judge over recent years indicates that an impact may be felt. For example, in 1970 there were approximately 170 appeals per judgeship. By 1993 and 1994, the number of appeals per judgeship had grown to 298 and 292, respectively. It has been projected that by the year 2000, the number of appeals filed in the U.S. courts of appeals will almost double from 48,815 in 1994 to 84,800 in 2000.

Harris noted that the Judicial Conference was not taking a position on whether S. 16, if enacted into law, could survive a constitutional challenge. He suggested, however, that the Senate committee may wish to consider issues relating to the President's authority over the judicial branch and the requirement that an Article III judge discharge duties other than exercising the judicial power of the United States.

Harris suggested that a better

approach may be to establish a commission that is composed of private parties or former judges.

"The executive branch and legislative branch will be best served if the commission members are either already well-versed in the subjects of international law and trade regulation instruments and procedures, or can devote undivided attention to becoming so. The judicial branch will be best served if it is able to devote 100 percent of its resources to the resolution of disputes within its jurisdiction," said Harris.

JUDICIAL MILESTONES

Appointed: Judge Royce C. Lamberth (D. D.C.), as Presiding Judge of the United States Foreign Intelligence Surveillance Court, succeeding Presiding Judge Joyce Hens Green, May 19.

Elevated: Judge Richard A. Enslen, to Chief Judge, U.S. District Court for the Western District of Michigan, succeeding Chief Judge Benjamin F. Gibson, May 1.

Elevated: Judge Charles P. Sifton, to Chief Judge, U.S. District Court for the Eastern District of New York, succeeding Chief Judge Thomas C. Platt, April 1.

Elevated: Judge Charles R. Simpson, III, to Chief Judge, U.S. District Court for the Western District of Kentucky, succeeding Chief Judge Ronald E. Meredith, December 1.

Senior Status: Judge Odell Horton, U.S. District Court for the Western District of Tennessee, May 16.

Judicial Conference Acts on Long Range Plan Recommendations

The Judicial Conference has approved, without substantive change, 64 recommendations in the *Proposed Long Range Plan for the Federal Courts* received at the Conference's March 1995 session. In doing so, the Conference took the first step toward establishing a comprehensive guide for policymaking and administrative action in the federal judiciary. The recommendations and implementation strategies not yet approved have been referred to the relevant Conference committees for purposes of further study and a report to the Conference at the next regularly-scheduled session in September 1995.

The plan recommendations already endorsed by the Conference include a wide range of principles and goals to carry the federal courts into the 21st Century. Among the key items are those defining the appropriate scope of federal civil and criminal jurisdiction; emphasizing the need to observe the Rules Enabling Act process; focusing attention on the problems of pro se litigation and jury administration; encouraging use of case management and alternative dispute resolution techniques; promoting efficient, informed governance; and highlighting the importance of effectively utilizing existing resources and obtaining public support for and understanding of the federal courts.

The recommendations and strategies referred to committees fall into five main categories: federalism and jurisdiction; court structure and process; governance and administration; utilization of resources; and access to federal court proceedings. The first category consists primarily of items aimed at reducing the scope of federal court jurisdiction and workload by reallocation of certain dispute resolution functions to

Article I courts, administrative agencies, and state courts (Recommendations 4, 7, 8, 10, 12, and 15). Also included are two recommendations that emphasize the need for Congress to consider the impact of legislation on the federal courts and state courts (Recommendations 13 and 14, respectively).

With respect to court structure and process, the Plan recommendations to be reconsidered include those addressing the basic organization of federal appellate and trial courts (Recommendations 17, 20, 25) and the geographic size and alignment of circuits and districts (Recommendations 18 and 27). Also referred for further study are items dealing with appellate review of bankruptcy judge and magistrate judge decisions (Recommendations 22-24), powers and composition of bankruptcy courts (Recommendations 28-29), use of nonjudicial staff and adjunct judicial officers in the courts of appeals (Implementation Strategy 39c), and the system of probation and pretrial services (Recommendation 33).

In the area of governance and administration, there will be further review of those items in the plan that address such broad issues as the distribution of governance responsibility (including spending powers) among regional (circuit) and local (district) authorities (Recommendations 42, 49, and 76), the role of the Judicial Conference (Recommendation 44), and the ability of judges to participate in the Conference, circuit judicial councils, and local court governance activity (Recommendation 52). Other, more specific issues—composition of the Conference's Executive Committee (Implementation Strategy 45c), method of selecting chief judges (Implementation Strategy 49b), and organization of the Administrative

Office and the Federal Judicial Center (Recommendation 48)—will also be considered again at the committee level before the Conference takes dispositive action.

Finally, the relevant committees have been asked to review the plan recommendations that concern use of judicial resources and access to the federal courts. Among the resource items to be reconsidered are policies on utilization of senior and retired judges (Recommendations 65 and 66) and magistrate judges (Recommendations 67 and 68), and the importance of minimizing the length of judicial vacancies and mitigating their impact on workload capacity (Recommendation 70, 72-75). The question of access will be reconsidered in the context of court users who do not speak English (Recommendation 89), public and press access to proceedings (Implementation Strategy 94d), filing and user fees (Recommendation 90), private attorney representation of indigent criminal defendants (Recommendation 92), and education of jurors about the jury system and the courts generally (Recommendation 96).

The Judicial Conference's Committee on Long Range Planning was created by the Chief Justice in 1990 to chart a general course for the federal courts. The Committee published a draft *Proposed Long Range Plan for the Federal Courts* in November 1994, and circulated the draft for public comment, which it received from judges, attorneys, public interest groups, legislators, and private citizens with an interest in the future of the federal courts. The modified plan was submitted to the Conference for consideration at its March 1995 meeting.

JUNE

- 22-23 Thursday-Friday**
Committee on Federal-State Jurisdiction
- 22-24 Thursday-Saturday**
National Workshop for Circuit Judges
- 25-26 Friday-Saturday**
Committee on the Judicial Branch
- 28-July 1 Wednesday-Saturday**
Sixth Circuit Conference
- 29-July 1 Thursday-Saturday**
Fourth Circuit Conference

JULY

- 5-7 Wednesday-Friday**
Committee on the Rules of Practice and Procedure
- 5-8 Wednesday-Saturday**
Committee on Codes of Conduct
- 6-7 Thursday-Friday**
Committee on the Administrative Office
- 12-14 Wednesday-Friday**
National Workshop for District Judges II
- 17-18 Monday-Tuesday**
Committee on Financial Disclosure
- 19-21 Wednesday-Friday**
Workshop for Magistrate Judges of the 2d, 6th, and 9th Circuits
- 21-22 Friday-Saturday**
Committee on the Budget
- 25-29 Tuesday-Saturday**
Eighth Circuit Conference

MAGISTRATE JUDGE, Western District of North Carolina

Applications for the position of full-time magistrate judge at Asheville, North Carolina, are being accepted. Qualified applicant must be members in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands, for at least five years (with some substitutions authorized); be competent to perform all duties of the office; be less than 70 years old; and not be related to a judge of the district court. Salary: \$122,912 per annum. Interested persons should contact Frank G. Johns, Clerk, U.S. District Court, 401 West Trade Street, Room 204, Charlotte, NC at (704) 344-6610 for a copy of the application. Applications must be submitted by the potential nominees personally and must be received by July 15, 1995.

CLERK OF COURT, Eastern District of Virginia

The U.S. District Court for the Eastern District of Virginia, headquartered in Alexandria with divisional offices in Norfolk, Richmond, and Newport News, is seeking an experienced administrator for the position of Clerk of Court. Applicants must have ten years of progressively responsible administrative, court, or legal experience, with at least three years in a management position. Salary: JSP 17 (\$96,530-114,129). Interested applicants must submit original and three copies of letter of application and resume to The Honorable James C. Cacheris, Chief Judge, P.O. Box 21449, Alexandria, VA 22320-2449 by July 17, 1995.

FEDERAL PUBLIC DEFENDER, District of Colorado

Applications are being accepted for the position of Federal Public Defender headquartered at Denver. Qualified applicants must be members in good standing of the bars of all states in which admitted to practice, must have an ability to administer an organization effectively, must have a reputation for integrity, and must have a commitment to the representation of those unable to afford counsel. Appointment is for four years. Salary: \$115,700. Applications and instructions may be obtained by writing Robert L. Hoecker, Circuit Executive, Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO 80257, or by fax at (303) 844-2079, setting forth full name and mailing address. Completed applications must be received no later than July 31, 1995.

LEGAL COUNSEL, Supreme Court of the United States

Applications are being accepted for the position of Legal Counsel. Qualified applicants are attorneys with excellent analytical, research and writing skills; demonstrated ability to perform high quality legal work with minimum supervision and with specified time limits; and a minimum of three years of practice, preferably including federal and constitutional law. Experience with appellate courts is particularly helpful. Salary: from SCP-13/1 (\$50,198- mid-sixties), depending on experience and salary history. A commitment of two years only is expected. Send resume, SF 171, or Optional Form 612 and a brief writing sample to Supreme Court of the United States, 1 First Street, NE, Personnel Office, Room 3, Washington, D.C. 20543. Applications must be received by the close of business July 7, 1995.

PRINCIPAL GUIDELINE DRAFTER AND TECHNICAL ADVISOR, U.S. Sentencing Commission

Applications are being accepted for the position of Principal Guideline Drafter and Technical Advisor. Salary: GS-15+. Must have law degree or equivalent advanced degree in relevant field and at least six year of experience. Send resume or SF 171, latest performance appraisal, and drafting or legal writing sample to U.S. Sentencing Commission, One Columbus Circle, NE, Suite 2-500, South Lobby, Washington, D.C. 20002-8002. Call (202) 273-4508 for a copy of the vacancy announcement. Applications must be received by the close of business July 14, 1995.

EQUAL OPPORTUNITY EMPLOYERS

Judicial Branch Committee Responds to Senate Pay Freeze Plan



Judge Barefoot Sanders

The Judicial Conference's Judicial Branch Committee has been quick to respond to the Senate's budget plan to freeze pay increases for judges until the year 2002. The committee notified both houses of the dire effect of a seven-year freeze on federal judges' salaries.

"I respectfully submit that if this provision is enacted, it will have a profound adverse impact on the quality and pluralism of the federal judiciary for many future decades," wrote Judge Barefoot Sanders (N.D. ex.), chairman of the Judicial Branch Committee, in a letter he sent to both the chairman and ranking members of the Senate and House Budget Committees.

At this stage, only the Senate budget balancing plan contains a freeze on the pay of judges, members of Congress, and Senior Executive Service Employees. These federal officials last received an increase in compensation in 1993.

"I suggest that, before denying federal judges cost-of-living adjustments for nine consecutive years, Congress should inquire: Should American citizens have a significant diminution in the quality of justice in our federal courts in order to save

the modest expense of annual cost-of-living adjustments for judges?"

Sanders asked in his letter. "I believe that our nation will be much better served by a salary structure for the federal Judiciary that will continue to attract and retain judges of extraordinary capabilities who come from diverse backgrounds and experiences."

The judges' concern over their compensation is supported by the irregular pace of increases they have received in recent years. Judges first were covered by a statutory provision for annual pay adjustments in 1975, when the Executive Salary Cost-of-Living Adjustment Act was passed. This law provided that judges would receive the same percentage increase accorded General Schedule employees. However, the provisions of this act rarely were implemented because in subsequent years Congress passed separate measures cutting off such raises for themselves and others. A further limitation was placed on federal judges in 1981 when section 140 of Public Law 97-92 was enacted, which provides that no salary increase shall be given to judges in the absence of

specific legislative action.

Finally, in 1989 Congress passed the Ethics Reform Act, which provided a catch-up pay raise of approximately 33 percent over two years. At that time, judicial salaries in real terms had declined 30 percent over the preceding two decades. Over the same period—1969 to 1988—more judges left the federal bench for economic reasons than in all the time from the establishment of the federal Judiciary in 1789 to 1969. Pay increases were approved for the first two years under the 1989 act, but starting in 1993, the freeze on increases first occurred.

In his letter, Sanders cautioned that a freeze in judges' pay could result in Congress having to take the politically unpopular position of voting for a large catch-up increase in the future, as was the case in 1989.

"I hope that, after the most careful deliberation, you will conclude that the modest cost-of-living adjustments for judges, which are provided for under the Ethics Reform Act, are both fair and essential," Sanders wrote. "That act is sound law and should be allowed to continue to operate."

Review continued from page 3
over the FJC's program for educating newly-appointed district court judges and the FJC is otherwise abolished, how much money would be saved?

■ How much money is spent each year on meetings of the Judicial Conference? How much money is spent each year on FJC workshops or conferences? How much money is spent by each judicial circuit on its circuit judicial conference?

■ How much money has been spent on bias review task forces? Figures should be broken down by circuit.

■ For the D.C. Circuit, who is the executive director of the bias review task force and how was that person selected?

■ For those circuits where task forces have submitted bias reports, have the reports been methodologically sound?

Ninth Circuit Nominations on Hold



As he introduced legislation to create a new Twelfth Circuit out of the Ninth Circuit, Senator Conrad Burns (R-MT) also has announced his intention to place a hold not only on two current nominees to the Ninth Circuit Court of Appeals, but also on all future nominations to the court until the circuit is split.

Burns is co-sponsor of S. 853, the Ninth Circuit Court of Appeals Reorganization Act of 1995, that would split the Ninth Circuit, creating a new Twelfth Circuit composed of Alaska, Idaho, Montana, Oregon, and Washington. Other bill co-sponsors are most of the senators from all the states forming the proposed circuit: Senators Slade Gorton (WA), Frank H. Murkowski (AK), Ted Stevens (AK), Dirk Kempthorne (ID), Larry E. Craig (ID), Bob Packwood (OR), and Mark O. Hatfield (OR).

Bill supporters have cited the Ninth Circuit's large caseload and delays in cases pending as justification for a split in the circuit. Gorton introduced similar legislation in the 101st and 102d Congresses, citing "[M]y state of Washington and our

Northwest neighbors are dominated by California judges and California judicial philosophy. . . In sum, the interests of the Northwest cannot be fully appreciated or addressed from a California perspective."

In response to the bill, Ninth Circuit Chief Judge J. Clifford Wallace, a long-time proponent of large circuits, replied, "The Ninth Circuit is strong and functioning well; there is no reason to divide it. Its size has many advantages, including diversity, flexibility, and innovativeness in case management. Dividing the circuit is no panacea—the same cases will still require the same judicial attention they receive now, and no new judgeships are proposed in this bill."

Wallace added, "There is widespread judicial and lawyer support for preserving the Ninth Circuit in its present configuration, and we're concerned that the senator's hold on nominations to the court—we have four vacancies now—will hinder the court in addressing its caseload in a timely manner."

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JUDICIAL BOXSCORE

As of June 1, 1995

Courts of Appeals	
Vacancies	16
Nominees	6
District Courts	
Vacancies	46
Nominees	13
Court of International Trade	
Vacancies	2
Nominees	0
Courts with "Judicial Emergencies"	22

Interview continued from page 1
 judges and others in the courts, the committee frequently heard the same criticism: the AO did not have a cooperative attitude and was too bureaucratic and controlling. Judges and court staff felt the AO required them all too often to play "mother may I" in getting cooperation. Key leaders of the Article III judges felt that the AO was not advancing the judicial Conference legislative program. These were among the chief internal problems I thought had to be addressed without delay.

We quickly set out a plan, which established the AO as a service agency based on the over-riding principle that policy should be set by judges and not Washington bureaucrats. We decentralized, delegated, and divested those functions and activities that could be reassigned or eliminated. With cooperation and participation from the court family, I believe we have nearly revolutionized the AO so that today it is a leader in service and possesses the finest professional staff in government.

Q: Every administration has its ups and downs. Could you highlight what you feel were the best—and the toughest—moments?

A: Many of the more memorable events are in the legislative arena. Every Judiciary budget we bring to Congress figures among our best and toughest moments. Obtaining the resources necessary for the administration of justice has been an uphill battle and one that promises to continue, especially as Congress federalizes many state crimes.

One of the first things that hit me as director was the famous Gramm-Rudman-Hollings legislation calling

for substantial reductions or a slow-down in all federal spending. Interestingly enough, since 1986, all three of those senators have served successively as chairmen of our appropriations subcommittee. Our response required some major institution building. The Budget Committee of the Judicial Confer-

country that will house much of the Judiciary well into the next century, thanks in part to an innovative program of design and space planning unique in the federal government. Beginning in 1990, working with Judge Robert Broomfield and his Space and Facilities Committee, many chief judges throughout the

"The 'four Es' will be our guiding light; we will strive to accomplish our job expeditiously, efficiently, economically and effectively. I await the challenges of my second decade."

ence, under Judge Charles Clark, took the lead and for the first time involved the so-called program committee chairmen of the Conference in making budget decisions.

Among our wins, I'd have to count the 1989 Ethics Reform Act, which gave federal judges a 33 percent increase in compensation and eased years of salary inequities. In 1986 we managed to obtain congressional approval for 52 new bankruptcy judgeships, and in 1988, seven bankruptcy judgeships were authorized. In 1990, 11 new court of appeals judgeships and 74 district judgeships were created; two years later, 35 bankruptcy judgeships were authorized. Considerable effort was dedicated to securing funding to pay for these new judges and their staffs. In 1988, a magistrate-bankruptcy judge retirement overhaul brought parity to the retirement system for these judicial officers, while the legislative reform of the Judicial Survivors' Annuities System in 1993 created a more equitable system of survivorship protection for the spouses and dependents of judicial officers.

We have numerous new and renovated courthouses across the

country, and with the GSA at the helm, we were able to launch the biggest single program in history to build new and renovate old courthouses. These buildings were made necessary by decades of increased work assigned to the Judiciary. I also recall with great pride the day we dedicated the Thurgood Marshall Federal Judiciary Building, bringing together, for the first time, all of the Judiciary's support agencies under one roof in a building that was completed on time and under budget.

There are too many names to mention when assigning credit for the numerous high points over the last decade. In addition to the unwavering support of Chief Justice Burger and Chief Justice Rehnquist, I have benefited greatly from the wisdom of four different Executive Committee chairs—Judges Wilfred Feinberg, Charles Clark, Jack Gerry, and currently, Gil Merritt. These judges helped steer the Judiciary through a challenging and difficult period. The Conference committee chairs who contributed to the Judiciary's successes are too numerous to mention, yet the service and

See Interview on page 10

Interview continued from page 9
 leadership of Chief Judge Richard Arnold as chairman of the Budget Committee stands out. I also would be remiss not to include the talented people at the AO who daily dedicate themselves to improving the judicial branch. Names such as Pete Lee, Jim Macklin, Bill Burchill, and Karen Siegel are familiar to virtually all judges. There are countless others who have played a role in making the AO the success it is today.

Personally, this is the most stimulating and challenging job I have held. I have a sense that what we do at the AO is meaningful. I can go home every night not only with a briefcase full of work, but also with the sense that we have done some good for the Republic and the taxpayers.

Q: Are you reinventing government—or at least the federal Judiciary?

A: If reinventing means looking at what is good for the federal Judiciary and what serves the public interest best, then yes, we're reinventing. An important AO ongoing initiative is to decentralize administrative authorities to the courts, including budget and personnel functions. Giving courts the resources and power to make the decisions that clearly affect their service and management is good for the overall court system and for the public. Also, decentralization has allowed the AO to stay comparatively small—in terms of budget and staff—in relation to the Judiciary. A new court personnel system delegates compensation and classification authority directly to the courts, cutting red tape and giving court managers much more flexibility in managing their work force. Many court functions have been automated—from case management and bankruptcy noticing to electronic

public access to opinions and Judiciary-wide communications on the Data Communications Network.

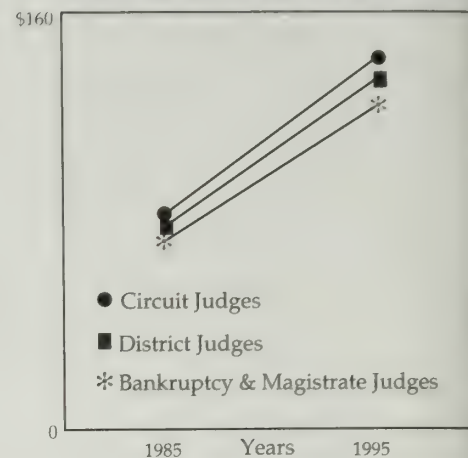
At the direction of Chief Justice Rehnquist, the Judicial Conference's committee structure was revised in 1987, giving more authority to the Executive Committee, which now develops the Judiciary's annual spending plan and priorities. In turn, the Conference created the Economy Subcommittee of the Committee on the Budget to identify opportunities to reduce costs. In 1993, we coordinated an effort to identify cost-containment efforts, and many of the resulting ideas are being used by the courts. We actively solicit court advice through a network of advisory groups, whose membership is drawn from the courts. Two years ago we developed new guidelines for the advisory groups that will increase participation, responsibilities, and their voice on policy matters. Within the AO, we've initiated an independent personnel system, and a planning and management objectives system.

I have never appeared in a courtroom or practiced law. However, as I told Chief Justice Burger ten years ago, I believe I bring to the director's job some solid management skills as well as a working knowledge of the way Washington operates. I believe these qualities have helped create a streamlined, innovative, and effective AO.

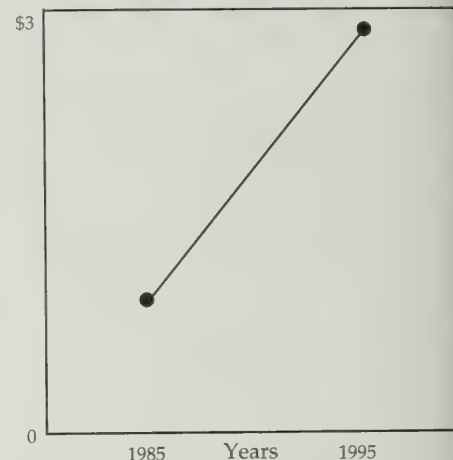
Q: If you had to name one critical event that has most changed the federal Judiciary during your tenure, what would it be?

A: I think it is fortunate that there is no one single event that has significantly altered the federal Judiciary. Instead, we've experienced a gradual process of change that has come usually after due reflection and study. Certainly the Federal Courts Study ↗

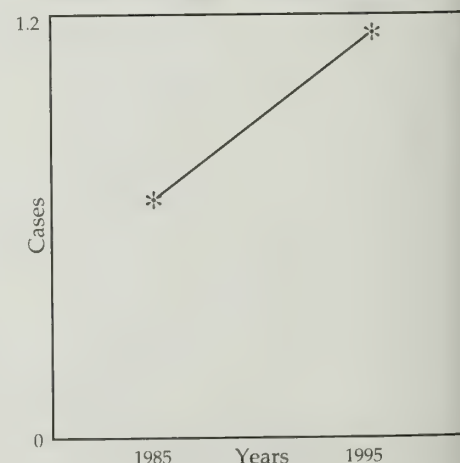
Judicial Salaries \$ In thousands



Judiciary Budget \$ In Billions



Total Filings Cases In Millions



Committee and the Conference's Long Range Planning Committee are two prime examples. Congress continues to consider and enact improvements recommended by the study committee. I suspect the Long Range Plan, when it is approved in its final form, will serve as a valuable blueprint for the Judiciary for some time to come. There are numerous pieces of legislation that have impacted the way the courts do their business. The Civil Justice Reform Act and an assortment of crime bills are prime examples.

Perhaps the hallmark of the last decade was growth. An increase in and the changing nature of that work have altered the landscape of the Judiciary. In many areas, the courts simply have been unable to keep pace. For instance, at the circuit level, the number of appeals filed went up 45 percent since 1985, yet the number of judgeships rose by only 26 percent. While the number of criminal filings at the trial level went up only 15 percent over the last ten years, the number of persons under supervision grew by 35 percent. Perhaps even more important, is the changing nature of the criminal caseload and the demands complex cases with multiple defendants place on judges and court staff. We have not always enjoyed adequate funding to meet these needs, and twice over the past ten years the funds available to pay lawyers appointed to represent indigent defendants under the Criminal Justice Act have been depleted.

But there also is some good news. The total Judiciary budget went from just over \$1 billion in 1985 to close to \$3 billion in 1995. District judges salaries rose from \$78,700 to \$133,600 over the past ten years, with other judicial officers enjoying similar increases. The staff in court clerks' offices has gone from 6,774 to 10,609; and probation and pretrial services staff went up from 3,272 to 6,742.



In his ten years as director of the AO, L. Ralph Mechem has frequently testified before Congress on matters of interest to the Judiciary.

The AO has felt the growth in the courts, as our responsibilities also have expanded. However, over the past ten years our share of the Judiciary's resources actually has declined. In 1985, the AO's appropriation represented 2.77 percent of the Judiciary's appropriation. Ten years later the AO's share is 1.64 percent—a drop of 41 percent.

So, while I am unable to single out an event that has altered the Judiciary over the past decade, there certainly have been many changes. The Judiciary I see today is asked to do more with less than the system I witnessed when I joined the AO in 1985.

Q: What issues do you see looming on the horizon in the next ten years?

A: Unfortunately, some of the hurdles we've faced over the previous ten years will continue to plague us. While Congress has generally recognized the unique funding needs of the Judiciary, budget cuts are the order of the day. For some time to come we can expect to receive less than we need in terms of funding. It is a cause for grave concern that federal judges have not received a pay raise in three years. It

does not take too many such setbacks before the Judiciary fails to attract and retain the caliber of judges it needs and deserves. Certainly a similar situation existed prior to 1989. We need to be vigilant in our efforts to ensure it does not happen again. And while the Judiciary has little influence in how and when judicial vacancies are filled, the number of vacancies that go unfilled, sometimes for years, creating judicial emergencies on several courts, should be a continued matter of concern.

Meanwhile, we can expect Congress to add to the judicial workload with legislation creating new federal crimes, which in turn increases the number of people public defenders defend and the probation population the Judiciary oversees. We are facing the question of a funding rescission and a possible construction moratorium in building courthouses. We should do our best to educate Congress on the impact of such actions.

We also will need to come to terms with our relationship with the GSA. While we have, I believe, shown innovation in our approach through projected space needs and publication of the *U.S. Courts Design*

See Interview on page 12

Interview continued from page 11
Guide, the GSA maintains its hold on the real property lead reins. As I have said before to Congress, we are simply supplicants in courthouse construction. In the years to come, it may be necessary to review this relationship.

The court security budget went from \$25 million and 828 court security officers in 1985 to \$97 million and 2,182 court security officers in 1995. Nevertheless, the climate today forces security to be a large concern for anyone who works in a federal courthouse. Sadly, more and more judges are subjected to threats and danger, not only in the courthouses, but also away from the courts. We will continue to work closely with the U.S. Marshals Service and Congress in this area. There simply are no short-cuts to be taken here. Court security must be fully adequate.

The General Accounting Office is conducting at least a dozen studies



Director Mechem spoke at the dedication of the Thurgood Marshall Federal Judiciary Building in 1992.

and investigations, all for a branch of government that receives less than 2/10 of 1 percent of federal expenditures. An inordinate amount of judicial and staff time and resources are required to comply with these uncoordinated and seemingly unending GAO reviews. I suspect that no one in Congress, where these

studies ostensibly originate, is aware of all of the Judiciary reviews that are ongoing or the serious negative effect they have upon our ability to do our work.

While Congress generally has been understanding and responsive to the Judiciary's needs, we must continue to educate and inform the other two branches of the unique responsibilities the courts possess. We all have a role here. Too often the Judiciary is the forgotten branch. If there is a budget summit and the legislative and executive branches are present, we also should be there.

Finally, as director of the AO and secretary to the Judicial Conference, I will continue to do everything possible to carry out the policies as they are approved by the Conference. The "four Es" will be our guiding light; we will strive to accomplish our job expeditiously, efficiently, economically and effectively. I await the challenges of my second decade. ✍

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THE THIRD BRANCH

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AUG 15 1995

Warren Burger Leaves Imprint on the Judiciary Judiciary Funding Goes Before Congress



The Chief Justice and associate justices of the Supreme Court gathered on the steps of the court. Retired Chief Justice Warren E. Burger was brought to lie in repose in the Great Hall.

When Retired Chief Justice Warren E. Burger passed away late last month he left behind a lasting imprint on the administration of the nation's courts. During his 17-year tenure as Chief Justice of the United States, federal and state courts and their related administrative agencies felt and benefited from his influence.

Chief Justice William H. Rehnquist said that Burger "will long be remembered as a major contributor to the decisional law of this court and as] an innovative reformer of

the administration of justice." President Clinton praised Burger as a "strong, powerful, and visionary chief justice."

As the leader of the judicial branch, Burger was concerned with court management and efficiency. He was a strong advocate of court administrators and supported the creation of the office of circuit executive. Burger helped bring technology into the courts and pushed for streamlined court docketing.

See *Burger* on page 4

When the House and Senate return from their July 4 recess, the attention of both bodies will turn to fiscal matters, providing the Judiciary with a clearer view of its fiscal year 1995, 1996, and long-term budget prospects.

In late June, the House Commerce, Justice, State, the Judiciary, and Related Agencies Subcommittee marked-up its FY 96 appropriations bill. The subcommittee funded the Judiciary at 4.3 percent over the FY 95 enacted level. In comparison, the subcommittee gave the Department of Justice a slightly smaller increase of 4 percent, cut the Department of Commerce by 20 percent, and reduced the Department of State and other international accounts by 9 percent.

The subcommittee provided no funding for Post Conviction Defender Organizations or the State Justice Institute. The FY 96 funding measure is expected to be taken up by the House Appropriations Committee on July 11 and come before the full House on July 18.

Also in late June, the House Subcommittee on Treasury, Postal Service, and General Government marked-up its FY 96 appropriations

See *Funding* on page 6

INSIDE

Congress Moves on Antiterrorism Bills
A Nation Pays Tribute to Warren Burger
Courts of Appeals Facilitate Pro Se Cases

2
5
7

Congress Moves on Antiterrorism Bills

In the aftermath of the April bombing of the Alfred P. Murrah Building in Oklahoma City, the executive and legislative branches moved legislation that would address the threat of terrorism. President Clinton already had proposed the Omnibus Counterterrorism Act of 1995 in February, part of the initiative addressing international terrorism announced in his State of the Union Address that would "strengthen the United States' hand in combating terrorists. . ." Following the Oklahoma attack, the President attached \$1.25 billion in enhancements to the package.

On June 7, the Senate passed S. 735, the Comprehensive Terrorism Prevention Act of 1995, on a 91 to 8 vote. The House leadership followed by introducing its own bill, H.R. 1710, the Comprehensive Antiterrorism Act of 1995. The House Judiciary Committee approved the bill on June 20. The full House failed to pass the legislation before the July 4th recess. Similarities in the existing versions of the bills and widespread support among members may mean that a final version of the bill could reach the President before the August recess.

Unlike the House bill, the Senate's antiterrorism bill, S. 735, contains provisions on habeas corpus reform. (See box on page 3.) The Senate bill also authorizes an appropriation to the Judiciary of \$4 million for each fiscal year from 1996 to 2000. When the House and Senate finally meet to conference the bills, it is hoped this funding may increase to reflect anticipated needs, in keeping with current estimates of how the legislation will impact the courts.

As drafted, both the Comprehensive Antiterrorism Act of 1995, S. 735, and H.R. 1710 would:

- Create a new federal crime for committing international terrorism within the U.S.

- Increase penalties for conspiracies to commit terrorist offenses and increase penalties for certain terrorism crimes. The Senate and House bills include a mandatory penalty for transferring an explosive material knowing it will be used to commit a crime of violence, and enhance penalties for use of explosives or arson crimes.

- Establish a special court to hear and decide cases in the removal of alien terrorists, which would have powers to shield classified information from defendants, who would receive only a summary of charges. Five judges, appointed by the Chief Justice of the U.S. would sit on this court.

- Prohibit the Attorney General from granting asylum to alien terrorists. Both the Senate and House bills would deny visas to certain people who belong to groups suspected of terrorism or, in some cases, who

come from countries that sponsor terrorism;

- Prohibit fund-raising for any foreign organization designated by the President as engaging in terrorist activities;

- Expand federal wiretap authorization for interceptions of communications in certain terrorism-related offenses. The House bill would give federal officers expanded authority for roving wiretaps and enhanced access to telephone billing records;

- Tag plastic explosives to make them detectable; and

- Authorize \$1.8 billion over five years for an enhanced antiterrorism effort at both the federal and the state levels.

The House and Senate bills also give the authority to the Attorney General to request military assistance with respect to offenses involving biological and chemical weapons.

Court Improvements Bill Introduced

Representative Carlos J. Moorhead (R-CA), chair of the House Subcommittee on Intellectual Property and Judicial Administration, and Representative Patricia Schroeder (D-CO), the ranking member of the subcommittee, have introduced H.R. 1989, the Federal Courts Improvement Act of 1995. It is anticipated that the bill will be introduced soon in the Senate.

The House bill contains numerous improvements in the operation and administration of the federal courts. It does not contain a repeal of section 140, which bars annual cost-of-living adjustments in pay for federal judges except as specifically authorized by Congress.

In his letter transmitting the leg-

islation, Administrative Office Director L. Ralph Mechem said it will "have a significant impact on both the criminal and civil operations of the courts and will enhance the delivery of justice in the federal system."

Among the provisions contained in the House bill is the authority for probation and pretrial services officers to carry firearms; a \$30 increase in the civil filing fee; a \$25,000 increase in the jurisdictional amount for diversity cases; a modified Rule of 80 to allow judges to take senior status at age 60; and an amendment to the Criminal Justice Act that would increase the number of districts served by defender organizations.

Habeas Corpus Reform in the Senate Antiterrorism Bill

While the Senate and House antiterrorism bills share many similar provisions, only the Senate bill contains provisions dealing with habeas corpus reform. The House previously passed H.R. 729 with its own version of habeas reform.

S. 735, as passed by the Senate, includes provisions that would:

- establish a one-year time frame for filing of habeas petitions for state and federal prisoners;
- make substantial changes to the right of appeal by requiring a certificate of appealability to be issued prior to appealing a habeas decision and requiring a substantial showing of the denial of a constitutional right;
- make extensive changes to current U.S.C. section 2254, including limits on the power of federal courts to order new evidentiary hearings; and
- place limits on successive petitions by both state and federal prisoners.

S. 735 also establishes special habeas corpus procedures in capital cases that would create an "opt-in" procedure for states establishing by statute, rule of its court of last resort, or another agency authorized by state law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of counsel in state-post conviction proceedings brought by indigent prisoners.

For "opt-in" states, S. 735 would:

- set time limits on the filing of habeas petitions by state prisoners;
- place limits on successive petitions except in limited circumstances;
- provide for a mandatory stay of execution;

- limit the scope of federal review; and

- set time limits on the federal district courts and courts of appeals for deciding habeas petitions.

A district court would have to render a final determination and enter a final judgment not later than 180 days after the date on which the application is filed, although one additional 30-day delay is permitted under certain circumstances. A court of appeals would have to act no later than 120 days after the date on which the reply brief is filed. The Administrative Office is required to submit an annual report to Congress on compliance with these time limitations.

S. 735 also makes these special habeas corpus procedures in capital cases applicable to state unitary review procedures if an "opt-in" state makes its mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel applicable to the unitary review procedure.

S. 735 would limit the scope of habeas review in the federal courts by preventing federal courts from awarding habeas relief on the basis of a claim that was adjudicated on the merits in state court, unless the adjudication of the claim resulted in a decision that was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

AJS to Administer Devitt Award

The American Judicature Society (AJS) has announced that it will take on the responsibility of administering the annual Edward J. Devitt Distinguished Service to Justice Award. The award recognizes exceptional service to the federal Judiciary. The 1995 winner was Judge Milton Pollack (S.D. N.Y.).

"The American Judicature Society is honored to direct this most prestigious award program," said the group's executive vice-president, Frances K. Zemans. "The program complements the society's longtime effort to support judicial excellence."

Founded in 1913, AJS is an independent national nonprofit organization of judges, lawyers, and lay members of the public who support improvements in the justice system at all levels. Its work includes improving judicial selection methods and promoting the highest standard of conduct and ethics in the courts.

AJS will organize and oversee the selection process for the Devitt Award. Egan, Minnesota, legal publisher West Publishing Co., which previously handled the award's administration, will continue to provide funding.

The award, presented every year since 1982, is named for the late Judge Devitt, former chief judge of the U.S. District Court for the District of Minnesota. All Article III judges are eligible recipients, and anyone can submit nominations.

The winner is selected by a committee of judges. This year's committee was chaired by Associate Justice Anthony M. Kennedy (S.C.) and composed of Chief Judge Richard Arnold (8th Cir.) and Chief Judge Sarah Barker (S.D. Ind.).

Burger continued from page 1

"By making the judicial system more productive, we are making the federal courts accessible to all Americans at less personal financial expense and less emotional expense—all in addition to saving citizens' taxes," Burger said in 1973.

During his tenure, numerous entities dedicated to the improvement of justice were created, including the National Center for State Courts, the Institute for Court Management, the American Inns of Courts, and the Supreme Court Historical Society.

Burger worked closely with the American Bar Association and its committees and regularly addressed the association at its mid-year meeting. Burger also recognized the value of establishing a continuing dialogue between federal and state judges, and as a result, helped create the Federal-State Judicial Councils. When discussing the relationship between state and federal judges, Burger often said, "We are not in separate institutions; we are all in the same church, just occupying different pews."

In a September 1988 interview with *The Third Branch*, Burger reflected on his successes and failures. He was a strong and frequent advocate of the establishment of an intermediate appellate court to ease the workload of the Supreme Court. But the proposal never advanced. "Apathy and inertia seem to surround proposals for improving the administration of justice unless there's a driving force behind them," Burger said in the interview.

Burger's interests and influence went well beyond the courtroom. He pushed for prison reform and the prison industries program. "It makes no sense to put people in prison and not train them to do something constructive," Burger said. In the area of judicial compensation, he said, "My

regret is that we weren't able to break this linkage between congressional salaries and judges' compensation."

Burger's impact was felt by courts at all levels. Recognizing the workload demands placed on the Chief Justice, in 1972 Burger secured congressional approval to create the office of the administrative assistant to the chief justice. The following



(L to R) In 1992, AO Director L. Ralph Mechem visited with Retired Chief Justice Warren E. Burger. In his retirement, Burger continued to demonstrate his deep interest in the Judiciary.

year his assistant, Mark Cannon, recommended and Burger supported the creation of the Judicial Fellows program. Burger is responsible for cutting the time for Supreme Court oral arguments from two hours to one hour per case and for changing the court's straight bench to its current curved wings.


As part of his constant effort to improve court operations, Burger advocated various studies of the courts. Perhaps the best known was the Com-

mission on Revision of the Federal Court Appellate System, known as the Hruska Commission. Burger was a force behind the Pound Conference, a two-day meeting in 1976 named after former Harvard Law School Dean Roscoe Pound and cosponsored by the Judicial Conference, the Conference of Chief Justices, and the ABA.

Burger was a frequent critic of the legal profession and its declining public image. He found lawyer advertising distasteful, lamented the rise in discovery abuse, and found many lawyer discipline systems to be inadequate. Burger once estimated that up to one-half of all lawyers entering court were not adequately trained to fully represent their clients.

He was a great supporter of the Administrative Office and looked to the AO to play the principal role to support the Judiciary at the national level. AO Director L. Ralph Mechem said, "The Judicial Conference, the federal judicial system and the nation all benefited from the exceptional knowledge, guidance, and foresight of Warren Burger, a great leader whom I was privileged to serve and came to know as a valued friend."

When Burger left the court in 1986 to head the Commission on the Bicentennial of the Constitution, he threw all of his energy behind the project and helped organize one of the largest celebrations in the nation's history.

Upon his retirement, the Judicial Conference adopted a resolution honoring Burger. In part, the resolution recognized the Chief Justice for his "unprecedented and unflagging efforts to improve the legal system [that] have left an unmatched legacy of efficient administration in the federal Judiciary despite the constant growth in demand placed on the judicial system." He presided over 34 meetings of the Judicial Conference. 

A Nation Pays Tribute to Retired Chief Justice Warren Burger

Retired Chief Justice Warren E. Burger was eulogized—during services at the National Presbyterian Church in Washington, D.C., and on the floor of Congress—by many of the people who had known and worked with him during a career that spanned six decades. Their remarks, excerpted here, attest to the extraordinary life and heart of the 15th Chief Justice of the United States.

Chief Justice William H. Rehnquist

"[T]o him it was not enough to simply lay down the principle from on high: the system of justice which would administer these principles was staffed by fallible human beings, and he bent his efforts to see that these people had all the help in the way of training and education that they could in order to succeed in their difficult task."



Associate Justice Sandra Day O'Connor

"Little did I think. . . that I might one day serve as an associate justice and have an opportunity to know and work directly with the Chief Justice until his retirement in 1986. He was so kind and considerate to me when I arrived at the court. From my investiture in September 1981, when he took my arm and led me down the steps at the front of the Court to confront the battery of press, until his retirement, he was always willing to discuss the issues and the problems, and to share his common sense and practical ideas.

I have always believed that one can serve God by trying to improve the world about us, by caring for our families and others, and by serving our community and our nation. Warren Burger did all of this and more—as well as anyone could. "



Judge J. Michael Luttig (4th Circuit)

Former law clerk to Chief Justice Warren E. Burger

"We, too, saw a 'visionary.' A traditional, conventional man, but a man who, from his professional days in St. Paul, was never comfortable doing it 'that way' just because 'it had always been done' 'that way.' A man who, although inspired by history, was never fearful of challenging even the tried and tested, which he frequently did with that familiar twinkle in his eye."



Senator Robert J. Dole (R-KS)

"[W]arren Burger authored over 244 majority opinions and assigned over 1,000 others. Like most Americans, I agreed with some of these opinions, especially those that restored a sense of balance to our criminal justice system—and disagreed with others. But I never doubted Warren Burger's devotion to his country. And I never doubted his devotion to making our judicial system and our courts run more efficiently."

Senator Howell T. Heflin (D-AL)

"[I] always looked to Justice Burger as a true leader in improving the administration of justice. . . . He believed that the process of the law was important to preserving its substance. He strove to make the courts run better. . . [H]e promoted the streamlining of court procedures. He has been called the guiding force in helping State courts improve their judicial administration."




Funding continued from page 1
bill, which contains funding for courthouse construction. The subcommittee agreed to provide 40 percent of the funding requested for 12 courthouses, but declined to provide any money for six projects that it viewed as new starts. It is uncertain when the full committee will take up the legislation.

A separate matter before Congress relates to the emergency supplemental/rescission bill. An earlier version of the contentious legislation had been vetoed by the President. Prior to the July 4 recess a new

supplemental/rescission bill passed the House, but was held up in the Senate over debate on social issues. The Judiciary funding in the new version, H.R. 1944, is identical to the bill the President vetoed. It provides \$16.64 million to enhance the security of judges and court staff. The legislation also rescinds \$58 million in funds for four federal courthouse construction projects. Unless the Senate changes the new bill dramatically, it is anticipated that it will be signed by the President.

The House and Senate also have adopted the conference report on H.

Con. Res. 67, which sets forth the plan to balance the federal budget over the next seven years. Since the budget resolution is not legislation, it is not submitted to the President for signature. Instead, the resolution contains assumptions that require further action by authorizing or appropriating committees to reach the goal of a balanced budget by the year 2002. Because the President was not a part of the negotiations over the resolution, it is expected that he will exercise the powers available to him when legislation to implement the plan is considered. 

7-Year Balanced Budget Resolution

<u>Provision</u>	<u>House</u>	<u>Senate</u>	<u>Conference</u>
7-Year Administration of Justice			
Budget Authority	\$116 billion	\$150.5 billion	\$143.2 billion
Budget Outlays	\$117.3 billion	\$151.4 billion	\$139.6 billion
7-year pay freeze for members of Congress, federal judges, and Senior Executive Service	No	Yes	Funding levels assume savings, but committees not instructed to enact pay freeze
Building construction	7-Year moratorium	25% Reduction	30% Reduction
Post Conviction Defender Organizations	Eliminate	No Change	Returned to committee
Retiree pensions based on high five years, not high three years	Yes	Yes	Yes
Employee retirement contribution up by 2.5%	2 1/2% increase	No	1/2% over 3 years
Reduction in federal agency overhead expenses	Yes, no specific \$	15% Reduction	Assumes \$29 billion savings over 7 years
Legal Services Corp.	Eliminate	65% Reduction	Returned to committee
State Justice Institute	Eliminate	No Change	Eliminate
U.S. Parole Commission	Eliminate	No Change	Eliminate
Violent Crime Reduction Trust Fund	Reductions	Fully funded	Substantial funding
Health Benefits	Status quo	Imposes fixed cap on govt. contribution	Takes Senate assumption

JULY

21-22 Friday-Saturday
Committee on the Budget

25-29 Tuesday-Saturday
Eighth Circuit Conference

AUGUST

9-10 Wednesday-Thursday
Executive Committee

21-24 Monday-Thursday
Ninth Circuit Conference

28-September 1 Monday-Friday
Video Orientation for New Magistrate Judges

30-September 1 Wednesday-Friday
Workshop for District Judges

BANKRUPTCY JUDGE, Eleventh Circuit

The U.S. Court of Appeal for the Eleventh Circuit seeks applications from highly qualified persons for a bankruptcy judgeship position in the Southern District of Alabama at Mobile, succeeding an incumbent judge. Term of permanent employment is 14 years. Current salary: \$122,912. For further information, contact Norman E. Zoller, Circuit Executive, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, N.W., Atlanta, GA 30303, or call (404) 331-5724. Application deadline is **August 31, 1994**.

BANKRUPTCY CLERK OF COURT, District of the District of Columbia

The U.S. Bankruptcy Court for the District of Columbia is seeking qualified applicants for the position of Clerk of Court. The Clerk supervises a staff of 14 employees and provides support services to the bankruptcy court judge and his staff. A law degree or postgraduate degree in court administration or public administration is desirable, as is knowledge of bankruptcy law. Salary: JSP 15-16 (\$71,664-109,265). Submit an original and four copies of a resume and cover letter to Mrs. LeeAnn Flynn Hall, Administrative Assistant to the Chief Judge, Room 4106 U.S. Courthouse, 333 Constitution Ave., Washington, D.C. 20001. Applications must be received no later than **August 15, 1995**.

CLERK OF COURT, Middle District of Florida

The U.S. District Court for the Middle District of Florida is seeking applicants for the position of Clerk of Court. The Clerk supervises a staff of 110 deputy clerks employed in divisional offices in Jacksonville, Tampa, Orlando, and Fort Myers. Applicants must have a minimum of ten years of progressively responsible administrative experience in public service or business, at least three years of which must have been in a position of substantial management responsibility. The resident station of the Clerk will be Tampa, subject to relocation as determined by the court. Salary: \$94,000-\$111,000, depending on experience. Applicants should submit a letter of application and current resume (original and three copies) to Clerk of Court Search Committee, c/o Clerk, U.S. District Court, Middle District of Florida, P.O. Box 53558, 311 W. Monroe Street, Jacksonville, FL 32201. Applications must be received by **August 31, 1995**.

CIRCUIT EXECUTIVE, Fifth Circuit

Applications are being accepted for the position of Circuit Executive for the Fifth Circuit, located in New Orleans, Louisiana. Applicants must possess a minimum of ten years of progressively responsible administrative or legal experience, demonstrating an understanding of management and organization, including at least five years in a position of substantial responsibility; experience in federal court is preferred. Must possess strong analytical, communications, and interpersonal skills. Salary: \$120,027 (equivalent to Level IV, Executive Schedule). Send seven copies of resume and salary history to be received no later than **August 21, 1995**, to Circuit Executive Search Committee, c/o Lydia G. Comberel, Circuit Executive, 600 Camp Street, Room 300, New Orleans, LA 70130.

FEDERAL PUBLIC DEFENDERS, District of Oregon and Eastern District of California

Applications are being accepted for the positions of Federal Public Defender in the District of Oregon and the Eastern District of California. Term of appointment is four years. Salary: \$115,700 per annum. Applicants must be admitted to practice and a member of the bar in at least one state; have at least five years of criminal trial practice experience with significant federal experience; and have substantial supervisory experience. The incumbent in each district has expressed an intention to seek reappointment. There is no right to automatic reappointment, nor is there any presumption that the incumbent is the most qualified applicant. Application materials can be obtained by faxing or writing to Office of the Circuit Executive, P.O. Box 193846, San Francisco, CA 94119-3846. Phone: (415) 744-6150. Fax: (415) 744-6179. Deadline for completed applications is **Friday, July 21, 1995**.

Courts of Appeals Facilitate Handling of Pro Se Cases

Pro se cases filed in the U.S. courts of appeals generally are resolved faster than those cases with counsel and often involve fewer and less complex issues than counseled appeals, according to a study by the Administrative Office.

Litigants who choose to serve as their own attorneys in federal court impose special demands on court staff. From 1983 to 1993, prisoner petition appeals, which make up the bulk of all pro se appeals, have more than doubled. As a result, some courts of appeals have reported that pro se cases almost completely occupy their central staff attorney units. The AO report found that in a period of just two years—from 1991 to 1993—the number of pro se litigants increased 49 percent.

In 1993, pro se appeals constituted 37 percent of the 45,391 appeals filed and 44,034 cases closed. Of the pro se appeals filed, 66 percent were prisoner petitions, 27 percent were civil appeals (excluding prisoner petitions), 6 percent were criminal appeals, and 2 percent were bankruptcy appeals.

In comparison to counseled appeals, a larger percentage of pro se appeals were resolved procedurally rather than on the merits (after hearings or submission of briefs), which could have affected the overall speed in processing. Courts of appeals indicated that they devote a great deal of time and effort to reviewing pro se cases and separating frivolous cases from those with merit. Some courts have devised special procedures to handle pro se appeals. Among the procedures being used are the following.

- Standard form briefs have been developed to assist pro se litigants.
- Pro se units of staff attorney offices review pro se appeals for proper jurisdiction and issues being raised, and recommend a method of

disposition consistent with court rules, such as with or without court argument.

■ Some courts have local rules of practice that allow summary dismissal of appeals without oral arguments, or prevent abuse of appeals filed by limiting the number of appeals that may be filed by litigants who frequently bring frivolous appeals.

■ Calendars have been established to enable judges to review pro se appeals over several days each month.

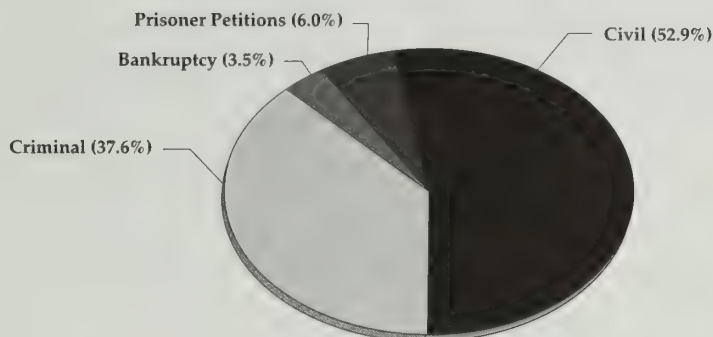
According to the study, 88 percent of all prisoner petition appeals filed were pro se. Of the pro se prisoner petition appeals filed, 55 percent

were civil rights appeals, and 29 percent were habeas corpus appeals. Pro se appeals made up 41 percent of all civil rights appeals (excluding prisoner civil rights petitions) and 7 percent of all contract actions appealed.

Only 8 percent of all criminal appeals were pro se appeals, with 7 percent of all drug-related appeals and 5 percent of all firearms/weapons appeals being pro se. Bankruptcy appeals made up only 3 percent of all appeals filed, with less than 1 percent of all appeals filed being pro se bankruptcy appeals.

Copies of *Pro Se Case Processing in the U.S. Courts of Appeals* may be obtained by contacting the AO's Statistics Division at (202) 273-2290.

Distribution of Counseled Appeals
Calendar Year 1993



Distribution of Pro Se Appeals
Calendar Year 1993



JUDICIAL MILESTONES

Deceased: Retired Chief Justice **Warren Burger**, Supreme Court of the United States, June 25.

Appointed: **Janet Bond Arterton**, as U.S. District Judge, U.S. District Court for the District of Connecticut, May 15.

Appointed: **David G. Bernthal**, as U.S. Magistrate Judge, U.S. District Court for the Central District of Illinois, May 1.

Appointed: **Maxine M. Chesney**, as U.S. District Judge, U.S. District Court for the Northern District of California, May 24.

Appointed: **Louis P. Etcheverry**, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of California, March 7.

Appointed: **Louise M. Flanagan**, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of North Carolina, May 16.

Appointed: **Joseph R. Goodwin**, as U.S. District Judge, U.S. District Court for the Southern District of West Virginia, May 15.

Appointed: **Thad Heartfield**, as U.S. District Judge, U.S. District Court for the Eastern District of Texas, May 1.

Appointed: **Charles Bruno Kornmann**, as U.S. District Judge, U.S. District Court for the District of South Dakota, May 5.

Appointed: **Robert E. Littlefield Jr.**, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of New York, May 1.

Appointed: **Sandra L. Lynch**, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the First Circuit, May 1.

Appointed: **Thomas C. Mummert III**, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Missouri, May 15.

Appointed: **Mark A. Pizzo**, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Florida, May 22.

Appointed: **Sidney H. Stein**, as U.S. District Judge, U.S. District Court for the Southern District of New York, May 1.

Retired: **Magistrate Judge William N. Mason**, U.S. District Court of the Eastern District of North Carolina, May 13.

Resigned: **Magistrate Judge Kathleen Anne Roberts**, U.S. District Court for the Southern District of New York, April 14.

Resigned: **Magistrate Judge Jeffrey Scott Wolfe**, U.S. District Court for the Northern District of Oklahoma, May 28.

Senior Status: **Judge Ann Aldrich**, U.S. District Court for the Northern District of Ohio, May 12.

Senior Status: **Judge Odell Horton**, U.S. District Court for the Western District of Tennessee, May 16.

Senior Status: **Judge Nathaniel R. Jones**, U.S. Court of Appeals Judge, U.S. Court of Appeals for the Sixth Circuit, May 13.

Senior Status: **Judge Damon J. Keith**, U.S. Court of Appeals for the Sixth Circuit, May 1.

Deceased: **Senior Judge William R. Collinson**, U.S. District Court for the Western District of Missouri, June 1.

THIRD BRANCH

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JUDICIAL BOXSCORE

As of July 1, 1995

Courts of Appeals	
Vacancies	14
Nominees	5
District Courts	
Vacancies	46
Nominees	13
Court of International Trade	
Vacancies	2
Nominees	2
Courts with "Judicial Emergencies"	20

Judges Panner and Young Lead Judiciary Economizing Efforts

The Budget Committee's Economy Subcommittee was established by the Judicial Conference in 1993. Its co-chairs are Judges Owen M. Panner (D. Or.) and William G. Young (D. Mass.) Panner was appointed to the U.S. District Court for the District of Oregon in 1980 and took senior status in 1992. Young was appointed to the U.S. District Court for the District of Massachusetts in 1985.

Q: What is the role and what are the responsibilities of the economy subcommittee?

A. Young: The subcommittee is very small. It includes Judge Panner, Magistrate Judge John Roper from Mississippi, and me. As a subcommittee, I think we have three responsibilities. The first and foremost is to perform within the Judiciary the Office of Management and Budget (OMB)-type function. The subcommittee makes sure that the Judiciary's budget presentation is consistent with OMB standards because the OMB approach to budget presentation is familiar to Congress.

The second role is to initiate and pursue a variety of studies within the Judiciary about ways we can economize, while continuing to provide a consistently high quality of justice. The staff of the Economy Subcommittee is very small, so in discharging that role, it is vital to have the cooperation of the various program committees and their staffs. All have done a superb job in very responsibly addressing the issues. There are some 28 different studies underway or recently completed addressing a variety of issues affecting efficiency.

The third major area and function of the Economy Subcommittee is to

be an honest broker of ideas relative to economy and efficiency in light of the overarching concern of doing justice for every litigant who comes into the court. To that end, the subcommittee has established a database in which we have recorded virtually every idea that people have suggested. We try to see that they are communicated to the program committees who can best evaluate them. It is important to understand that the Economy Subcommittee makes no policy recommendations. The Budget Committee, of which we are a part, makes policy recommendations. The subcommittee asks probing questions—those that Congress will ask us—and tries to obtain and evaluate the answers.

Panner: The subcommittee renders direct assistance to the program committees, as Judge Young said, without suggesting any substantive changes. Our goal is to assist them in understanding the budget process and give the best possible ideas we can about economies so they can determine what decisions to make and how to submit their budgets to the Budget Committee.

Q: The subcommittee is one of the newest of the Judicial Conference subcommittees. What was the impetus for its formation?

A. Panner: Very simply, the Judiciary realized the difficult economic times in the country, as far as budgeting goes. I think the Judiciary has a marvelous record of economizing and accomplishing a great deal for the amount of money that we spend. But when the budget nationally got so tight, the Judiciary

realized that it was our responsibility to do everything we possibly could to economize further. Of course, it got a little impetus from Congress because they were under such extreme pressure, too. Also, we found ourselves having to add to our budget each year in order to do our job because our workload was increasing tremendously. With the increasing caseload, the additional pressure on judges, and the pressure from Congress to hold the budget down, it was necessary to take this step.

Q: Why has Congress shown a strong interest in the formation of the subcommittee?

A. Panner: Because Congress is under extreme budgetary pressure and because its members understand the OMB function of budgeting, they were delighted when we came up with this idea and embraced it immediately. We can't match OMB's function exactly, but we can attempt to conform our process more generally to it.

Young: Our whole success with the Congress depends upon the credibility of our budget responsibility. The record under Budget Committee chairs Chief Judges Charles Clark and Richard Arnold has been one of absolute fidelity to telling the Congress the truth in a timely manner. We support that. Our function is to ensure that our spending proposals are justified and that we are truly responsible with respect to the public's money.

Q: How does the Subcommittee work with the other Judicial

See Interview on page 10

Interview continued from page 9
Conference committees and subcommittees?

A. Young: Without any equivocation, the spirit of cooperation and the sense of fiduciary duty to responsibly utilize the public's money goes across the entire Judiciary. Everyone with whom we have worked—judges and support staff, both at the AO level and in the various circuits and districts—are genuinely trying to see how we can maintain the highest quality of justice, and at the same time, make appropriated funds go as far as possible.

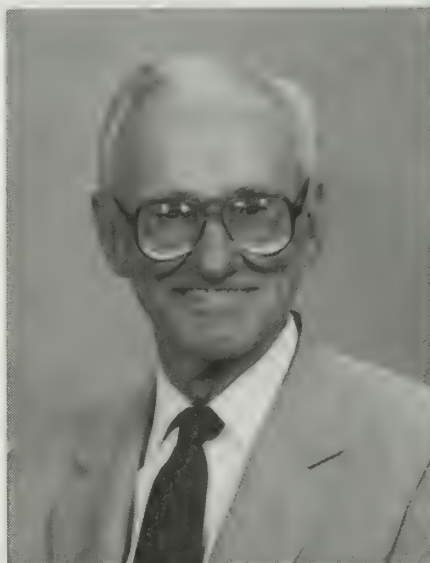
As a subcommittee, we act as liaison with the various program committees. Each of us takes a few committees as a liaison responsibility. As Judge Panner explained, we try to assist them in their budget presentations. We try to see that major ideas for economizing are analyzed and prepared in a responsible fashion. Then we try to maintain this database of ideas and act as an honest broker to make sure that the ideas get to the people who need to hear about and evaluate them.

Unlike OMB, which makes policy, in the Judiciary policy decisions are made by the Judicial Conference, with recommendations by the full Budget Committee, of which we are three members. The committee establishes the Judiciary's budget subject to review by the Judicial Conference. The OMB's function also is to establish and maintain the spending plans for appropriated funds. In our governance structure, that is the function of the Executive Committee of the Judicial Conference, not the Budget Committee.

Q: How does the subcommittee impact the budget process?

A. Panner: The way the process worked in the past, the Budget Committee met with the pro-

gram committee chairs in July to formulate a proposed budget to be presented to the Judicial Conference for the next fiscal year. After the program chairs prepared their budgets, the first part of the July proceedings involved the program chairs sitting down and beating out a budget that the Budget Committee thought would be acceptable to Congress. That was a difficult process for the program



Judge Owen M. Panner

chairs, especially for those comparatively new chairpersons who hadn't been in the process before.

That process has changed. Now the Economy Subcommittee meets with the program chairs and helps them with the issues as they submit their budgets. At the July meeting, all the program chairs sit down with the Budget Committee, and they go through each of the budgets. The program chairs get a chance to make their presentations, not just to the Budget Committee, but in front of the other program chairs. It is a difficult process, and there are areas where the program chairs must be flexible. But if they can understand the entire picture, they get a better perspective. The Judicial Conference and its Budget Committee ultimately make the decisions. Through the

work of the subcommittee, they're probably better informed than they were in the past. I think there's the general feeling among the program committee chairs and the members of the Budget Committee that the process is a little more efficient and effective.

Young: I have an anecdotal point to add. In doing this work, you learn a great deal about the Judiciary. For example, we see that the criminal dockets of the courts are growing. We're finding out that the average time to try the average criminal case is close to doubling what it was only a few years ago. This has happened even though, nationwide, we've kept our time from filing the complaint to disposition relatively constant. That's an extraordinary change, and it alters the way you make your workload calculations and the implications of that workload. That's the kind of thing we're trying to grapple with as a subcommittee.

Q: What issues are in the forefront for the Economy Subcommittee?

A. Panner: It seems to me the key issues are the number of support personnel it takes to operate the Judiciary. We're operating now at well under the 100 percent formula. Percentages vary in the mid-80s percent of what we should have. The goal of the program committees, working with the Budget Committee, is to find the most efficient way the Judiciary can function with its personnel. We are studying, as Judge Young mentioned, all sorts of ideas and rewards for ideas. We're trying to rate the efficiencies of various courts in all different manners to make it easier for the clerks' offices, for example, or probation offices to function efficiently with the least personnel. We do not plan to cut them below what it takes to do the

job. We're not going to place the Judiciary in a position in which it can't function. By statute there are jobs the courts must do and which cannot be delegated. But we need to function in the best possible way.

One of the critical issues that has come before us is the payments for defense counsel. Are federal defender organizations the most efficient way to do it? Are panel attorneys? Incidental to all that is the evaluation of the individual cost to represent defendants in criminal cases. While the government may spend years investigating before they bring an indictment and have the assistance of all kinds of experts and federal agencies, it's the defense lawyer who has to take up the case for the defendant. The evaluation of whether that defense lawyer is using hours, time, and experts most efficiently is extremely difficult. We're studying all of those issues and trying to come up with some answers. Those, I think, are among the key issues.

Young: I can think of three additional areas. Our Committee on Security, Space and Facilities has established standards systemwide for the security of federal courthouses, and we are very interested in seeing those standards implemented. Working with that committee, we also are trying to establish the most accurate system for evaluating our space needs, both at present and as the courts grow or contract, so we're not holding onto space we're not using and likewise that we have the space we need, when we need it, to serve the public.

In the automation area, we are engaged in a significant study relevant to our legal research materials, their mix, how they interface, what we need now, and what we will need in the future.

We constantly are trying to upgrade our financial management




Judge William G. Young

tools, so we can give accurate predictions to the Judiciary's program managers about the funds that will be available and used to discharge our function, and also so we can report to Congress exactly how funds are being spent.

Q: Do you see the subcommittee's role or direction changing over time? Will there ever be a time when you see the subcommittee's work completed?

A: Young: It seems to me that for the foreseeable future it will be vital to the credibility of the Third Branch, in working with Congress, that we have our own internal mechanisms to evaluate the use of the funds appropriated for the judicial function. I feel very strongly—and I know Judges Panner and Roper do, too—that the goal of the subcommittee is not simply to economize here and there. We also serve as a basis for sound advocacy with Congress and with the public in respect to what is necessary to discharge the judicial function. We help to identify and support those things which are vital to giving people justice through the end of the second millennium.

Panner: I might add that we are still quite a new subcommittee, and I think that the Budget Committee and the members of the Conference will continue to watch us and look for adjustments. We can always improve. At this minute though, I think the members of the Budget Committee are satisfied that we are doing the best job that we can do. 

Margeson to Assist Economy Subcommittee

The Economy Subcommittee receives assistance in its work from the new chief of the Subcommittee's Support Office, Diane V. Margeson. Margeson has been acting chief of this office within the Administrative Office's Office of Finance and Budget since May 1994. She is responsible for directing the planning, analysis, and implementation of a wide variety of finance and program analyses and studies in support of the Economy Subcommittee.

Margeson received her undergraduate degree in economics from the University of Michigan in 1986, and an MBA from Georgetown University in 1988. She was previously a budget examiner at the Office of Management and Budget, where she reviewed and analyzed budget requests for several Department of Justice programs, including the Federal Bureau of Prisons, the Office of Justice Programs, and the U.S. Parole Commission.

Bankruptcy Filings Rise in Second Quarter of FY 95

According to statistics compiled by the Administrative Office's Statistics Division, bankruptcy filings for the second quarter of the fiscal year—the three-month period ending March 31, 1995—were up 5 percent from the previous quarter. This is the first time quarterly filings have increased since June 30, 1994. Filings in the second quarter totaled 212,626. The increase is spread across all chapters of bankruptcy filings, except for nonbusiness Chapter 11.

The upturn of bankruptcy filings in the second quarter has notably slowed the rate of decline in filings for the 12-month period ended March 31, 1995. Filings were down by only 2.3 percent when compared to the same period in 1994. The annual percentage decrease in filings had been declining steadily. When computed for 12-month periods in 1994, filings decreased 9 percent in

Quarterly Bankruptcy Filings

3-Month Period Ending	Total Filings
March 31, 1995	212,626
December 31, 1994	201,618
September 30, 1994	208,187
June 30, 1994	216,213
March 31, 1994	206,565
December 31, 1993	206,570
September 30, 1993	215,498
June 30, 1993	229,406
March 31, 1993	222,694
December 31, 1992	228,562
September 30, 1992	236,810
June 30, 1992	250,622
March 31, 1992	252,733
December 31, 1991	234,383
September 30, 1991	231,743
June 30, 1991	246,430
March 31, 1991	231,017

March, 8 percent in June, 7 percent in September, and 5 percent in December. Despite the slide, bankruptcy filings in federal courts have remained above the 800,000 mark since 1991. March 1995's figures stand at 838,959.

Of the total number of bankruptcy cases filed in the 12-month period ending March 31, 1995, there were 568,565 Chapter 7 cases, or straight liquidations, down slightly from the 590,191 Chapter 7 cases filed in the same period in 1994. The next largest group of bankruptcy filings were under Chapter 13, totaling 255,382—up slightly from the 249,087 Chapter 13 cases in the 12-month period ending March 31, 1994. There were also 14,055 Chapter 11 and 916 Chapter 12 bankruptcies filed in the year ending March 31, 1995.

THE THIRD BRANCH

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Congress Eyes Courthouse Savings



(L to R) Judge James M. Rosenbaum (D. Minn.) and Chief Judge Robert C. Broomfield (D. Ariz.) appeared at a Senate hearing to address issues relating to courthouse construction.

The Judiciary is working closely with Congress, the executive branch, and the public sector to ensure that federal courthouses are constructed in the most effective and efficient manner, a federal judge last month told House and Senate subcommittees that have been critical of courthouse construction.

Chief Judge Robert C. Broomfield (D. Ariz.), chairman of the Judicial Conference's Committee on Security, Space and Facilities, testified

before the Senate Environment and Public Works Subcommittee on Transportation and Infrastructure and before the House Subcommittee on Public Buildings and Economic Development. He was accompanied at the Senate hearing by Judge James M. Rosenbaum (D. Minn.), a member of the Committee on Security, Space and Facilities and chair of the Space Standards Subcommittee.

See *Courthouse* on page 4

House Passes FY96 Funding Bill

Late last month the House passed the fiscal year 1996 appropriations bill for the Judiciary that is a 4.8 percent increase over the FY 95 funding level but 8.8 percent short of the amount requested for FY 96. This is in comparison to decreases from FY 95 of nearly 20 percent for the Commerce Department, and 9 percent for the State Department and other international accounts. Overall, the Department of Justice received only a 4 percent increase for FY 96.

Chief Judge Richard S. Arnold (8th Cir.), chairman of the Judicial Conference's Budget Committee, has written to Senator Phil Gramm (R-TX), chairman of the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, to seek restoration of the necessary funds that weren't provided by the House.

"In some instances, funding at the House level could cause irreparable harm to the administration of justice and impair the ability of the federal courts to carry out their mission," Arnold said in his letter. "The Judiciary is aware of the tight fiscal constraints placed on the Appropriations Committees. We are

See *Funding* on page 2

INSIDE

Supplemental Appropriations Bill Signed	3
National Fine Center Charts Progress	6
Interview with Judge Frank Magill	10

Funding continued from page 1
looking at all possible ways to improve the efficiency of the Judiciary, while handling an expanding workload. Further, in the Judiciary's continuing efforts to hold down spending, reductions in the fiscal year 1996 request were identified and provided to committee staff. The appeal is below even this lower reestimated level," Arnold wrote.

The Judiciary's FY 95 funding level was \$2.9 billion. The House-passed bill provides for \$3.04 billion for FY 96. The House allows \$2.4 billion for the Salaries and Expenses account, which is \$237 million below the request. This account pays for all personnel-related expenses, as well as rent, utilities and uncon-

trollable contractual services.

"A cut in the Judiciary's personnel would put the public at risk and translate into a reduction in the Judiciary's ability to provide equal justice under law," Arnold wrote. This is particularly true in the probation and pretrial area, where a reduction in personnel provides fewer officers to supervise an increasingly violent clientele."

The Judiciary also is asking the Senate to restore the money for new magistrate judge positions, which would help eliminate existing delays and backlogs in the affected courts, and recalled bankruptcy judges, which are an inexpensive alternative to the creation of new bankruptcy judgeships.

The House implemented major cuts in the Defender Services and corrections and supervision areas. The hardest hit were the Post-Conviction Defender Organizations, which the House "zeroed out" for FY 96 (See box on page 3). In all, the House reduced the Defender Services funding request by more than \$25 million. Sufficient money was not appropriated to adequately fund the drug dependent offender or mental health treatment programs for selected federal offenders. Additional House reductions occurred in the Judiciary Automation Fund, which provides essential systems to support the courts nationwide and to improve efficiency throughout the Judiciary.

Last year Congress enacted legislation that requires each circuit to establish a Bankruptcy Appellate Panel (BAP), unless the circuit council finds that there are insufficient judicial resources in the circuit or that the establishment of a BAP would result in undue delay or increased costs to the parties. The House, however, eliminated all funding for BAPs for FY 96.

In its consideration of the Judiciary's FY 96 funding measure, the House adopted only one floor amendment. It was offered by Representative Rob Portman (R-OH) and reduces the Salaries and Expenses appropriation by \$2 million for repair and alterations and courthouse furniture. Portman offered his amendment following a story by a Cincinnati, Ohio, television station on space for the bankruptcy court. Portman said he offered his amendment as a "warning to the Judiciary they must review the guidelines which are set forth in the design guide [*U.S. Courts Design Guide*] and make sensible changes." The television story, however, did not take into account the pressing space problems facing the district, the unique characteristics required in

Appropriations (In Thousands)

Account	FY 95 Enacted*	FY 96 Requested	FY 96 House Passed
Supreme Court			
Salaries & Expenses	\$24,240	\$25,834	\$25,834
Building & Grounds	3,000	4,003	3,313
Federal Circuit	13,438	15,495	14,070
Court of International Trade	10,685	10,859	10,859
Courts of Appeals, District Courts and other Judicial Services:			
Salaries & Expenses	2,340,127	2,645,965	2,409,024
Defender Services	240,500	295,761	260,000
Fees of Jurors	54,346	72,008	59,028
Court Security	113,640	116,433	109,724
Administrative Office	47,500	53,445	47,500
Federal Judicial Center	18,828	20,771	18,828
Judiciary Trust Funds	28,475	32,900	32,900
Sentencing Commission	8,800	9,500	8,500
Crime Trust Fund	0	30,700	41,500
Total Judiciary	\$2,903,579	\$3,333,674	\$3,041,080

* Includes rescission and supplemental appropriations.

President Signs FY 95 Supplemental Appropriations Bill

After six months of negotiations, Congress and the President have agreed on an FY 95 rescission and supplemental appropriations bill, which among other things, will appropriate \$16.64 million for court security to enhance the security of judges and court personnel. The President signed H.R. 1444, the

Emergency Supplemental/Rescissions Act of 1995, as Public Law 104-19 on July 27, 1995.

The legislation was drafted early this year as a relief and disaster aid package at first in response to the 1994 Los Angeles earthquake, and later in response to the Oklahoma City bombing. In June President

Clinton vetoed the bill, claiming that important social programs had been removed and replaced by pork.

The Judiciary's request to accelerate the enhancement of its security throughout the country was prompted in part by the tragedy of Oklahoma City. The funds will be used for screening and protection equipment and court security officers to ensure that occupants and visitors in court facilities are adequately protected.

The legislation also contains an appropriation of \$1 million for the National Bankruptcy Review Commission. The nine-member commission was created by the Bankruptcy Reform Act of 1994 to study issues relating to the Bankruptcy Code. Among the members are two judges, Judge Edith H. Jones (5th Cir.) and Bankruptcy Judge Robert E. Ginsberg (N.D. Ill.).

The bill rescinds \$79 million in FY 95 courthouse construction funds, which effectively stops projects in FY 95 in Seattle, Washington; Wheeling, West Virginia; Steubenville, Ohio; Sierra Vista, Arizona; and St. Thomas, Virgin Islands. The other courthouse construction projects receiving funding in the FY 95 appropriation were not affected by the rescission and supplemental bill and will proceed as planned.

House "Zeros Out" PCDOs

The House last month deleted all funding for Post-Conviction Defender Organizations (PCDOs), which provide for the appointment and compensation of qualified counsel in federal habeas corpus death penalty cases. The PCDOs were created in 1987 and currently 20 organizations serve 50 districts.

In his appeal letter to the Senate, Chief Judge Richard S. Arnold (8th Cir.), chairman of the Judicial Conference's Budget Committee, noted that elimination of the organizations will have a detrimental impact on the system.

"If PCDOs are eliminated, we will experience significant delays in reaching final dispositions in cases because it will be difficult to find qualified counsel for appointment," Arnold wrote. He added

that there will be "an increasing death penalty caseload and an insufficient pool of qualified and experienced attorneys to handle it. In addition, the cost of this program will be considerably higher if the PCDOs are eliminated."

The House funding level not only prohibits PCDO funding, but also fails to provide adequate money for the courts to meet their statutory responsibility of providing counsel through other possible sources. Arnold estimated that it likely would require more funds than the \$21 million requested for PCDOs in order to locate new counsel for existing and new cases. If the Senate does not remove the prohibition against PCDOs, Arnold requested funds for a six-month transition and close-out.


courthouses due to security concerns, and the active involvement of the General Services Administration.

The Administrative Office, the Federal Judicial Center, and the U.S. Sentencing Commission requested funding increases in FY 96

but were either held by the House at FY 95 funding levels or, as in the case of the Sentencing Commission, were funded below these levels.

In his appeal letter to the Senate, Arnold said, "The austere financial conditions of the past few years have forced the AO to reduce

spending in all areas to a bare-bones level." Any further reduction, Arnold wrote, would severely damage the AO's ability to support the needs of the courts and Congress.

The Senate is expected to begin its markup following its Labor Day recess. 

Courthouse continued from page 1
tee, and at the House hearing by Judge Robert E. Cowen (3rd Cir.), also a member of the Committee on Security, Space and Facilities, and Judge Robert E. Coyle (E.D. Cal.). Gerald Thacker, assistant director for Facilities, Security, and Administrative Services of the Administrative Office, accompanied Broomfield at both hearings.

In his testimony, Broomfield told the subcommittees that necessary steps should be taken so that courthouses "are not only functional and safe, but that they represent real value to the taxpayers . . . reflect the best of contemporary American architecture of the communities where they are being built . . . exhibit the vigor and energy of the federal government . . . engender in the users and the public a respect for the tradition and purpose of the American judicial process, [and] meet the needs of those who conduct business in them far into the next century."

On courthouse construction needs for fiscal year 1996, which begins October 1, 1995, Broomfield noted that each project has been in the planning stage for two to three years and has undergone extensive review within the Judiciary and the executive branch. He also told the subcommittees, that projects are within the General Services Administration's (GSA) construction benchmarks and represent the least expensive way of providing the needed space. The GSA has estimated that taxpayers will save at least \$220 million in present value dollars over the life of the buildings if the new facilities are built. However, since the budget resolution calls for a reduction in federal construction, it is unlikely that all the structures will be funded. Broomfield said that the Judiciary would be pleased to work with the GSA and Congress in developing

methodologies and criteria for FY 96 construction needs.

"The Judicial Conference's Committee on Security, Space and Facilities and the Judicial Conference itself have been sensitive to budgetary constraints and have been focusing on them for the past several years," Broomfield said. "Let me assure you that the Judiciary is committed to working with your committee and others in the Congress to ensure that the scarce resources available are put to their best use."

Senator John Warner (R-VA), chair of the subcommittee, began the Senate hearing by saying, "In light of the budget resolution, this subcommittee will be operating with 30 percent less money in budgeting authority for federal building construction. In this austere budget environment, it would therefore not be prudent or responsible for this subcommittee to move forward on all of the prospectuses which we currently have before us for fiscal year 1995 and 1996." He did observe, however, that it was his intention "to move forward within

the context of the budget on a project by project basis. This includes the area of construction prospectuses for courthouses."

Warner also cautioned that the subcommittee "shares a frustration with GSA, I believe, over the inability or the unwillingness of the Administrative Office of the Courts to prioritize space requirements." Coordinated prioritization would enable his committee to move forward in a more efficient manner, Warner said.

In response, Broomfield noted that at its March 1995 session, the Judicial Conference approved developing a five-year plan of courthouse construction projects. Previously the Conference had felt it inappropriate to prioritize projects which historically had been done by the two political branches of the federal government. "Our committee," said Broomfield, referring to the Judicial Conference Committee on Security, Space and Facilities, "has started a process of prioritizing projects to be included in that plan for the use of GSA and the Cong- ➤

Projects Receive Funds in FY96

Before the August recess, the House and Senate passed legislation that includes fiscal year 1996 funding for ten courthouse projects. The Senate Appropriations Committee report included language permitting the acceptance of a courthouse site by the city of Las Vegas, Nevada, with design funding, and the promise of construction funds in FY 97. The committee also requested a report on a federal building/courthouse to be built in Mobile, Alabama, and recognized the need for additional space in Little Rock, Arkansas, and health and safety problems at the Camden, New Jersey, courthouse/post office building. The funded projects are:

Tallahassee, Florida
Savannah, Georgia
Lafayette, Louisiana
Omaha, Nebraska
Albuquerque, New Mexico

Central Islip, New York
Scranton, Pennsylvania
Columbia, South Carolina
Brownsville, Texas
Seattle, Washington

ress when considering requests, but our work is not yet complete. . . We would like to work with you, committee staff, and with GSA over the next few weeks prior to your committee markup to see what might be done to stay within the reduced funding available and still meet the pressing needs of the Judiciary and related executive branch agencies."

Committee member Senator Max Baucus (D-MT) also offered some support for courthouse construction, citing a growing population, serious crime increase, and old and deteriorating courthouses. But he warned that some courthouse requests are not priorities and are too expensive. Baucus has introduced legislation aimed at improving the federal building construction process. (See box.)

In the House, where Representative Wayne Gilchrest (R-MD) chaired the Public Buildings Subcommittee, the *U.S. Courts Design Guide* was the focus of the hearing. In particular, committee members questioned what they perceived to be excessive space requirements and interior extravagances in courthouses. To save money and increase efficiency, they would like to see the Judiciary develop a standard design model for courthouses nationwide. Gilchrest said, "Before we can authorize any new federal court construction, we need to be assured that the Judiciary's requirements appropriately reflect the current budgetary environment. We believe that the requirements in the current *U.S. Courts Design Guide* need review and revision."

Broomfield addressed several of the committee members' concerns in his response, while pointing out that the *U.S. Courts Design Guide* is meant to provide consistency and contain costs, and that the changing nature of the Judiciary's

Baucus Bill Looks at Improving Federal Construction

In late June, Senator Max S. Baucus (D-MT) introduced S. 1005, the Public Buildings Reform Act of 1995, which is aimed at improving the process for constructing, altering, and purchasing public buildings. The legislation will impose a nine-month long moratorium on the spending of money for any new construction projects and require that no later than 60 days after enactment, the GSA, in consultation with the Administrative Office, submit a report to Congress on the basic characteristics of court accommodations. In introducing his bill, Baucus was critical of both the GSA and the Judiciary.

"Many courthouses are way too expensive," Baucus said. "Quite a few have cost us over \$200 million and one has run up bills in excess of \$500 million. And what is particularly galling; some of these courthouses are practically palaces." Baucus went on to ask, "So why has this happened? To find out, we have to look at an obscure agency called the General Services


Administration, or GSA," he said.

The legislation would require GSA to assess the impact of the site selection on the cost and efficiency of a project and submit a prioritized list of building projects to Congress.

At the July 13 Senate hearing, Chief Judge Robert C. Broomfield (D. Ariz) indicated that while the Judiciary had not yet had an opportunity to study fully the Baucus bill, he was certain that the judicial branch either has pursued or is pursuing many of its provisions.

"We have been working on the development of a five-year plan for courthouse construction projects over the past year," said Broomfield. "We have worked with GSA on the development of design standards, and . . . jointly sponsored a private sector review of those standards in 1993. . . We would be pleased to address any reasonable suggestions to improve the design standards and to work with you to identify ways that we can further reduce costs."

workload is reflected in certain aspects of courthouses. For example, in the 1970s and 80s the Judiciary had attempted, he told the committee, to reduce courtroom size, but found such diminution was not practical in terms of how courts work. He also explained that only special proceedings courtrooms, which are intended to accommodate large trials, have high ceilings—an architectural necessity given the rooms' proportions. He also said that with the ability of magistrate judges to hear civil jury

trials, there was a need to increase the number of courtrooms with jury boxes. And, finally, while Broomfield acknowledged that sharing courtrooms in larger courthouses may be possible and is being considered, court space in smaller courthouses is less flexible. Broomfield commented, however, that cases can proceed only when a judge and a courtroom are available. 

National Fine Center Charts Progress for Congress

The Administrative Office (AO) has met the commitments it made to a Senate committee last year—in full and ahead of schedule—with a National Fine Center (NFC) that had 25 courts on the central fine processing unit by April 1995, an AO representative told the Senate Committee on Governmental Affairs last month.

The AO's Assistant Director for Finance and Budget Richard A. Ames, and John Benoit, project director for the NFC, appeared at the Senate committee hearing on criminal debt collection efforts. Ames told the committee that the NFC "made great progress during the past year." [See sidebar on "NFC Builds Groundwork"]. By August 1, 34 courts were part of the NFC, positioning the NFC team to meet its next major scheduling milestone. "The NFC team will continue to meet its objectives," said Ames, "including 58 courts by December 26, 1995, and all 94 courts by August 26, 1996, thereby completing Phase I of the implementation effort on time and on budget."

Despite meeting project objectives outlined a year ago to the Senate committee and its then chair, Senator Byron L. Dorgan (D-ND), the NFC project drew criticism from the present committee chair, Senator John McCain (R-AZ) and from now ranking minority member, Dorgan. In his opening statement, McCain faulted the efficiency of the NFC project, pointing to delays in implementation, and raising questions on how the NFC will work. "In no way do I desire to prejudge the situation," said McCain, "But, I must say I'm skeptical that we are on the right track to establish a Fine Center that fulfills congressional intent in a timely and cost efficient manner."



(L to R) At a recent Senate hearing, National Fine Center Project Director John Benoit and AO Assistant Director of Finance and Budget Richard A. Ames discussed the NFC's progress.

In response, Ames detailed the success of Phase I of the NFC project, which began with the smallest courts and utilized off-the-shelf accounting software to permit a fast start. Ames also reported that NFC Phase II implementation has proceeded better than expected. Phase II is an enhanced system that will include more comprehensive management information capabilities, along with wide-scale, on-line access.

Also testifying at the hearing were representatives from the General Accounting Office, a private consulting firm, and Gerald Stern, special counsel for financial institution fraud from the Department of Justice (DOJ). The DOJ has statutory responsibility for criminal debt collection and was scheduled to testify on its progress in this area. At the 1994 hearing, Dorgan noted that almost \$4 billion is owed in criminal fines, and criticized DOJ debt collection efforts, saying "[I]t is an outrage that the U.S. Justice Department has collected less than one cent on the dollar owed in fines by criminals." This year, Stern did not testify about DOJ's overall criminal

debt collection efforts. Instead he focused on the NFC project and expressed concerns that the present system will not provide on-line-interactive access to the NFC. Stern criticized the NFC for dropping the development of an on-line interactive access system in favor of a local area network (LAN) and indicated that DOJ would not agree to implementation of the larger districts on the NFC until the new system is operational. Ames, however, indicated that he was surprised by the representations made by DOJ. According to Ames, DOJ previously agreed to the NFC's plan to test its LAN system this month and to introduce it in the districts beginning in October so that a proven LAN system is available to facilitate implementation of the larger districts early next year.

Following the hearing, AO Director L. Ralph Mecham released this statement:

"We were pleased to have the opportunity to testify on the operation of the National Fine Center. Every commitment we made at a hearing before the same committee a year ago has been met or exceeded. ▀

AUGUST

28-September 1 Monday-Friday
Video Orientation for New Magistrate Judges

30-September 1 Wednesday-Friday
National Workshop for District Judges III

SEPTEMBER

5-8 Tuesday-Friday
Tenth Circuit Conference

7-8 Thursday-Friday
Advisory Committee on Bankruptcy Rules

19-20 Tuesday-Wednesday
Judicial Conference of the United States

20-22 Wednesday-Friday
Workshop for Magistrate Judges of the 5th, 8th, 11th,
and D.C. Circuits

CLERK OF COURT, District of South Dakota

The U.S. District Court for the District of South Dakota, headquartered in Sioux Falls with divisional offices in Rapid City and Pierre, is seeking qualified applicants for the position of Clerk of Court. The clerk's office staff consists of 16 positions. Salary: JSP-16 (\$79,684-\$103,598). Interested applicants should submit a cover letter, detailed resume, and references to Chief Judge Richard H. Battey, 515 Ninth Street, Room 318, Rapid City, South Dakota 57701.

Closing date: **October 15, 1995.**

CLERK OF COURT, Northern District of Iowa

The court is seeking qualified applicants for the position of Clerk of Court. The office has headquarters in Cedar Rapids, with a divisional office in Sioux City and an unstaffed court point in Fort Dodge. Applicants must have a minimum of ten years of progressively responsible administrative experience in public service or business, which provided a thorough understanding of organizational, procedural, and human aspects in managing an organization, three of which must have been in a position of substantial management responsibility. Interested applicants should submit a detailed resume to Michael J. Melloy, Chief Judge, Suite 304, U.S. Courthouse and Federal Building, 101 First Street S.E., Cedar Rapids, Iowa 52401. Applications must be received by **September 1, 1995**, unless extended.

FEDERAL PUBLIC DEFENDERS, District of Hawaii and Northern District of California

Applications are being accepted for Federal Public Defender positions in the District of Hawaii and the Northern District of California. Applicants wishing to apply for both positions must submit a separate application for each. An applicant must be/have: (1) admitted to practice before the highest court of at least one state; (2) a member in good standing of every other state bar of which he/she is a member; (3) a minimum of five years of criminal practice, preferably with significant federal criminal trial experience; (4) administrative expertise; (5) a reputation for integrity; and (6) a commitment to the representation of those unable to afford counsel. The term of appointment is four years. Applications can be obtained by calling (415) 744-6150, by faxing (415) 744-6179, or by writing the Office of the Circuit Executive, P.O. Box 193846, San Francisco, CA 94119-3846, Attn: FPD Recruitment-District of Hawaii and/or Northern District of California. Application deadline is the close of business on **September 15, 1995.**

HOUSE OFFICE OF THE LEGISLATIVE COUNSEL

Law clerks who are interested in applying their interpretive and writing skills in the service of the legislative branch may wish to consider employment in the Office of the Legislative Counsel, a non-political office that provides drafting services for the members and the committees of the U.S. House of Representatives at every stage of the legislative process. Starting salary: \$45,000 per year. Those interested in learning more about the opportunities in the House Legislative Counsel's Office should write Pope Barrow, Deputy Legislative Counsel, Cannon House Office Building, Room 136, Washington, D.C. 20515. Fax: (202) 225-3437. E-mail: pbarrow@hr.house.gov

EQUAL OPPORTUNITY EMPLOYERS

New School Year Brings Reminder For Judges Who Teach

As the new Fall semester approaches, many judges will be continuing the traditional and time-honored practice of teaching students about the law. *The Code of Conduct for United States Judges* permits and, indeed, encourages judges to do so, to the extent time permits. As individuals learned in the law, judges are in a unique position to contribute to the improvement of the law and to impart their knowledge and experience to the next generation of practitioners.

The commencement of a new

school year is an opportune time to review some important points about judges' teaching activities, including relevant provisions of the Ethics Reform Act and related regulations. Judges who plan to teach for compensation must secure the *prior* approval of the chief judge of the circuit. The process for obtaining approval of teaching activities is described in the Judicial Conference Regulations on Outside Earned Income, Honoraria, and Outside Employment, section 5(d), set forth in the *Guide to Judiciary Policies and*

Procedures, Volume II, Chapter VI, Part H.

Approval of compensated teaching activities generally must be obtained: (1) before commencing any compensated teaching, (2) before any material increase in the compensation or time required for teaching previously approved, and (3) before the commencement of teaching in any new academic year. To obtain approval, a request should be submitted to the circuit chief judge. The following information should be included in the request: (1) the institution for which the teaching will be done, (2) the source and amount of compensation, and (3) the time required, including travel time. The requesting judge should also represent that the proposed teaching activity will be consistent with the Code of Conduct.

Circuit chief judges evaluate requests for approval under criteria outlined in the regulations. While most requests are approved, an occasional request may be disapproved. Disapprovals may be appealed to the circuit judicial council.

Compensation received for teaching is subject to the outside earnings ceiling under the Ethics Reform Act. For 1995, the ceiling is \$20,040. Judges may deduct from their compensation the ordinary and necessary expenses paid or incurred to produce the teaching income (such as unreimbursed travel expenses) in determining whether the ceiling has been reached. Income from teaching activities should be disclosed on judges' annual financial disclosure forms, in accordance with the instructions.


For further information about these requirements, judges may contact the Administrative Office General Counsel's Office at (202) 273-1100.

National Fine Center Builds Groundwork

Bringing 38 courts onto the central processing unit over the last year—and providing the capability to bring additional larger courts into the National Fine Center—has been possible as the following steps were accomplished.

- Business processes for use in both the courts and the NFC were established and implemented.
- A central fine processing center in Washington, D.C. was designed, staffed and launched.
- Training programs were developed and delivered to courts.
- Hardware and software applications were developed for court units and the NFC.
- A new NFC processing software package was selected, modified and installed.
- New court software was designed and developed to automate the new judgment and commitment procedure.
- A system-wide data interchange plan based on district network application servers was developed.

Unfortunately, the record regarding the collection of debt—which is the legal responsibility of the Department of Justice—has not fared so well. The Senate hearing failed to shed any light on why the department has collected such a small amount of the more than \$4 billion

in outstanding criminal fines mentioned by Senator Dorgan. Instead of collecting fines as required by law, the department apparently has chosen to create a smoke screen around the fine center to hide its own failures." 

JUDICIAL MILESTONES

Appointed: Thomas B. Bennett, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Alabama, June 5.

Appointed: Mary Beck Briscoe, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Tenth Circuit, June 1.

Appointed: Curtis Lynn Collier, as U.S. District Judge, U.S. District Court for the Eastern District of Tennessee, May 23.

Appointed: Shon T. Erwin, as U.S. Magistrate Judge, U.S. District Court for the Western District of Oklahoma, June 1.

Appointed: Susan Yvonne Illston, as U.S. District Judge, U.S. District Court for the Northern District of California, June 2.

Appointed: J. Garvan Murtha, as U.S. District Judge, U.S. District Court for the District of Vermont, June 1.

Appointed: Hugh B. Scott, as U.S. Magistrate Judge, U.S. District Court for the Western District of New York, June 2.

Elevated: Judge Marvin E. Aspen, to Chief Judge, U.S. District Court for the Northern District of Illinois, succeeding Chief Judge James B. Moran, July 1.

Elevated: Judge Richard A. Enslen, to Chief Judge, U.S. District Court for the Western District of Michigan, succeeding Chief Judge Benjamin F. Gibson, May 2.

Elevated: Judge Jean C. Hamilton, to Chief Judge, U.S. District Court

for the Eastern District of Missouri, succeeding Chief Judge Edward J. Philippine, June 11.

Elevated: Judge Wm. Fremming Nielsen, to Chief Judge, U.S. District Court for the Eastern District of Washington, June 28.

Senior Status: Chief Judge Edward L. Philippine, U.S. District Court for the Eastern District of Missouri, June 11.

Senior Status: Judge Patrick F. Kelly, U.S. District Court for the District of Kansas, June 6.

Senior Status: Chief Judge James B. Moran, U.S. District Court for the Northern District of Illinois, June 30.

Senior Status: Chief Judge Justin L. Quackenbush, U.S. District Court for the Eastern District of Washington, June 27.

Senior Status: Judge S. Arthur Spiegel, U.S. District Judge for the Southern District of Ohio, June 5.

Deceased: Senior Judge Dudley B. Bonsal, U.S. District Court for the Western District of New York, July 22.

Deceased: Senior Judge William C. Hanson, U.S. District Court for the Southern District of Iowa, June 6.

Deceased: Senior Judge Thomas Tang, U.S. Court of Appeals for the Ninth Circuit, July 18.

Deceased: Chief Bankruptcy Judge Jerry G. Tart, U.S. Bankruptcy Court for the Middle District of North Carolina, July 21.

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Please direct all inquiries and address
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JUDICIAL BOXSCORE

As of August 1, 1995

Courts of Appeals	
Vacancies	14
Nominees	7
District Courts	
Vacancies	47
Nominees	15
Court of International Trade	
Vacancies	2
Nominees	2
Courts with "Judicial Emergencies"	22

Chief of Long Range Planning Office Named



Jeffrey A. Hennemuth

Jeffrey A. Hennemuth has been named chief of the Administrative Office's Long Range Planning Office. Hennemuth has been the senior attorney in the office since June 1993, and has played a key role in providing professional support to the Judicial Conference Committee on Long Range Planning and in developing the first *Long Range Plan for the Federal Courts*.

Hennemuth joined the AO in 1991 as a senior attorney in the Article III Judges Division, where he provided staff support for the Judicial Branch and Intercircuit Assignments Committees. He also worked on a variety of special projects in the Office of Judges Programs. Previously, he had been a litigating attorney for six years in the Office of the Solicitor, U.S. Department of Labor. After receiving his law degree from Ohio State University College of Law, he was a law clerk to Judge Paul C. Weick (6th Cir.) and an instructor of legal research and writing, appellate advocacy, and criminal procedure at the Ohio Northern University College of Law.

Federal Courts Improvements Act Introduced in Senate; Pending in House

At the request of the Judiciary, earlier this month Senators Orrin Hatch (R-UT) and Howell T. Heflin (D-AL) introduced S. 1101, the Federal Courts Improvement Act. While both senators said they had concerns with certain provisions contained in the bill, they also agreed that the legislation merits careful consideration and a full hearing. The bill contains numerous improvements in the operation and administration of the federal courts.

Earlier this summer Representatives Carlos J. Moorhead (R-CA) and Patricia Schroeder (D-CO) introduced H.R. 1989, a similar although not identical version of the

bill. Among the provisions contained in the House and Senate version are the authority for probation and pretrial services officers to carry firearms; a \$30 increase in the civil filing fee; a \$25,000 increase in the jurisdictional amount for diversity cases; a modified "Rule of 80" to allow judges to take senior status at age 60; and an amendment to the Criminal Justice Act that would increase the number of districts served by the defender organizations. The House bill does not include a repeal of section 140, which bars annual cost-of-living adjustments in pay for federal judges except as specifically authorized by Congress.

FJC Plans New Edition of Bench Book

The Federal Judicial Center (FJC), in consultation with its *Bench Book* Committee, plans to publish a new edition of the *Bench Book for U.S. District Court Judges* in 1996. Judge A. David Mazzone (D. Mass.) is chair of the *Bench Book* Committee, and its members are Chief Judge William O. Bertelsman (E.D. Ky.) and Judges William B. Enright (S.D. Cal.), Aubrey E. Robinson, Jr. (D. D.C.), and Louis L. Stanton (S.D. N.Y.).

As part of the process of preparing a new edition, the FJC and the *Bench Book* Committee invite judges to submit ideas for improving the *Bench Book*, including but not limited to suggestions for new material, revisions in current content, and changes in organization and format. Please send suggestions to the FJC's Publications &

Media Division, ATTN: *Bench Book*.

The FJC published its first *Bench Book* in 1969, and second and third editions were published in 1979 and 1986. Since 1986, sections of the book have been periodically updated and new sections added in response to legislative and other changes.

The planned fourth edition of the *Bench Book* will depart from the two-volume, loose-leaf format of previous editions and appear in a single, softbound publication. This will ensure that judges have a complete, current version of the *Bench Book* in a single, handbook-sized publication. For the convenience of judges who prefer the loose-leaf format, however, the FJC will make electronic versions of the *Bench Book* available for them to reproduce and use as they would like.

Judge Frank Magill: Reviewing Financial Disclosure Reports

Judge Frank Magill was appointed to the United States Court of Appeals for the Eighth Circuit in 1986. The Chief Justice appointed him a member of the Committee on Financial Disclosure (formerly Judicial Conference Committee on Judicial Ethics) in 1987, and Chair of the Committee in 1993.

Q: What are the responsibilities of the Committee on Financial Disclosure?

A: The Committee on Financial Disclosure has supervisory responsibility for the Judiciary's implementation of the financial disclosure provisions of the Ethics Reform Act of 1989. The committee has three basic functions: it reviews the financial disclosure reports filed by judges and other judicial branch officers and employees; approves and modifies the reporting forms and instructions; and responds to inquiries regarding financial disclosure matters from judges, employees, and the public.

Q: Is May 15 the only time judges and employees are required to file a report?

A: No. Most judges or employees will file three types of reports during their time with the Judiciary. Nomination or initial reports are required from all judges when they are first nominated for or assume the bench. Judicial employees file an initial report when they are appointed to a position the pay for which is 120 percent of the basic pay of a GS-15 for those who are compensated at \$81,529.20 or above for calendar year 1995. Thereafter, annual reports are due on May 15 of

each year until the filer retires or leaves the Judiciary. At that time, a final report is due which covers any unreported time period since the last annual report. This year, 2,667 annual reports covering calendar year 1994 will be filed and approximately 300 other reports will be received throughout the year.

Q: Do the members of the committee actually review financial disclosure reports?

A: Yes. Each of the judges on the committee is assigned an area of responsibility and personally reviews all reports for that area. After the reports have been received and an initial review is performed by the staff of the Administrative Office's Financial Disclosure Office, the reports are forwarded each Friday to committee members for review. The reviewing judge, either certifies the report as complete or directs that a letter be forwarded to the filer over my signature requesting more information in order to complete the report. Currently, each judge reviews over 150 reports.

In the other branches of government designated staff attorneys or ethics officials perform the final reviews and certification of the reports. The committee believes that it is extremely important that judge's reports are reviewed by judges who fully understand the financial disclosure requirements of the Ethics Reform Act, are familiar with the guidance contained in the Codes of Conduct, and understand significant differences inherent in judicial duties and responsibilities as opposed to those filers in the other branches of government.

Q: Have there been many changes during your tenure as chair of the committee?

A: We believe that our service to the filers in processing their reports has improved significantly over the last few years due to a number of changes in how the staff and the committee process reports. John Howell, the committee counsel in the Article III Judges Division of the AO, and his staff have instituted a number of management reforms that have significantly reduced the time required to process the reports and allows us at any given time to know where each report is in the review process. Also, the committee has spent considerable time and effort improving the filing instructions and clarifying reporting requirements for filers. As a result, for example, all financial disclosure reports received prior to July 1 have been screened and forwarded to the reviewing judge for final review.

More significantly, the committee reviewed, closed, and certified over 95 percent of the reports for calendar year 1993, that required no further information within 60 days or less. Our goal is to continue to meet the requirement of the Ethics Reform Act to complete all such reviews within 60 days. When you realize that the judges on the committee must first handle their cases and then dedicate the time to review and certify the reports, you must certainly appreciate that hard working, dedicated judges have been consistently appointed to the committee over the years.

Q: From the letters sent out to filers over the years, it ↗

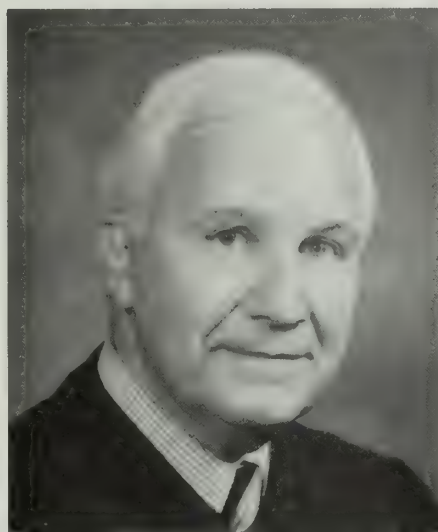
seems that many of the requests for information are about the failure to fill in blanks or use the right value codes to describe the value of an asset or its income. Is there too much "nitpicking" in the process?

A: The committee looks at the process as a two-fold obligation. First, we try not to ask for more information than is required by the statute. However, we have the obligation to ensure the Judiciary fully complies with financial disclosure requirements of the statute. The statute is surprisingly detailed in what it asks for. Currently, the committee is working to further clarify the filing requirements with respect to IRAs and brokerage accounts. This work has resulted in a number of letters of inquiry this year about the assets contained in such accounts. The key to effective implementation of the statute is to ensure a complete listing of assets when the filer is in a position to manage or direct the management of the asset, as opposed to a mutual fund where the filer simply buys shares in the fund, but is unable to influence day-to-day management activities or asset selection. Secondly, the reports are constantly scrutinized by the public and have been the basis for a number of articles about the Judiciary. The committee feels an inherent responsibility to ensure that the reports released to the public are an accurate reflection of an individual judge's activities and financial holdings.

Q: You mention the release of reports to the public. Can anyone look at the reports and does this not raise security concerns for judges and their families?

A: The statute is very broad with respect to release of reports. Basically, reports are available to just about anyone, including

prisoners and disgruntled litigants, provided they comply with the committee procedures for requesting the forms. The committee is particularly aware of the security concerns with respect to the release of reports. They are the same concerns that face filers in all three branches of government. As an example, the report form does not require home addresses, and any such addresses as well as financial account numbers



are redacted prior to release of the reports to the public. The committee also provides notification to individual judges and employees when their reports have been released.

Q: What happens if someone files late or refuses to file?

A: If a report is received over 30 days after its due date, a late filing fee of \$200 is assessed by the committee. The filer can request a waiver of the fee for good cause, but the reason must directly impact on the filer's ability to comply.


If a filer does not file, the statute ultimately provides for the referral of the filer to the Attorney General for prosecution. Fortunately, only one such referral has been made in recent years.

The staff of the Financial Disclo-

sure Office is instructed to make sure that filers are notified before the 30-day grace period expires in order to avoid the assessment of large numbers of late fees. For example, on June 1, the committee counsel sent letters to a number of filers whose annual report had not been received. All but four of the filers were able to file their reports prior to expiration of the 30-day grace period or requested and were granted an extension to complete their reports. The staff works very hard to manage the report process to ensure that problems are avoided.

Q: Can any significant changes be expected in the filing process for next year?

A: We envision no major changes. A number of steps have already been taken to improve the filing process. Reports are processed faster. Thus, requests for additional information now arrive in June and July when the memory and information is fresh. The filing instructions have been recently revised to add samples, checklists, and commentary to help clarify the filing requirements. Committee members are making presentations during the circuit judicial conferences inviting feedback and criticisms of the filing process. Several good suggestions have been made that we are evaluating. The committee is attempting to reduce the number of letters requesting information and replacing our inquiries with advisory letters to assist in the next year's filings. The software program continues to improve and certainly eases the burden of copying last year's information each time a report is due.

The staff of the Financial Disclosure Office of the Article III Judges Division is available to answer questions and assist filers. We urge filers to call the office at (202) 273-4626. 

Law Review Publishes Symposium on Federal Judicial Administration

The American University Law Review recently published a symposium on federal judicial administration to commemorate Director L. Ralph Mecham's Tenth anniversary as head of the Administrative Office. This special collection features an introduction from the Chief Justice and articles contributed by six current and former chairs of Judicial Conference committees, a former Federal Judicial Center director and deputy director, a district court clerk, and several present and past AO staff members. It represents a rare instance in which a major legal periodical has devoted significant attention to the broad range of issues affecting the internal organization and operation of the federal courts.

This symposium, appearing in volume 44, issue number 5 (June 1995) of the law review, includes

the following articles: *Some Introductory Thoughts*, William H. Rehnquist; *L. Ralph Mecham: A Tribute*, Richard S. Arnold; *The History of the Federal Judiciary's Automation Program*, J. Owen Forrester; *From Orphan to Maturity: The Development of the Bankruptcy System During L. Ralph Mecham's Tenure as Director of the Administrative Office of the United States Courts*, Lloyd D. George; *Measured Progress: The Evolution and Administration of the Federal Magistrate Judges System*, Philip M. Pro & Thomas C. Hnatowski; *Judges and Legislators: Enhancing the Relationship*, Deanell Reece Tacha; *Judiciary Reform: Recent Improvements in Federal Judicial Administration*, Harlington Wood, Jr.; *Criminal Caseload in U.S. District Courts: More than Meets the Eye*, David L. Cook, Steven R. Schlesinger, Thomas J. Bak & William T. Rule, II; *Long*

Range Planning: A Reality in the Judicial Branch, Richard B. Hoffman & William M. Lucianovic; *Thinking About Judgeships*, A. Leo Levin & Michael E. Kunz; *Renewal of the Federal Rulemaking Process*, Peter G. McCabe; and *A Study in Contrasts: The Ability of the Federal Judiciary to Change Its Adjudicative and Administrative Structures*, Charles W. Nihan.

The AO has obtained reprints of this symposium for official use in judicial orientation programs and other informational purposes. A limited number of copies are available, upon request, to judges and judicial branch staff. For further information, please contact the Office of Judges Programs, Administrative Office of the United States Courts, Suite 4-170, One Columbus Circle, N.E., Washington, D.C. 20544, (202) 273-1800.

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Judiciary Braces For FY 96 Funding Crisis

When fiscal year 1996 begins on October 1, 1995, there are a number of different scenarios that may occur. But, there is one that appears nearly certain—all 13 spending bills will not have been passed by both houses and signed by the President. This in itself is not a particu-

On August 25, 1995, Administrative Office Director L. Ralph Mecham sent a memorandum to the courts informing them of available operating options. In the absence of funding, the *Guide to Judiciary Policies and Procedures* (Vol. I, chap. III, part C) provides courts with specific

"[A]ll operations and services needed to maintain and support the exercise of the 'judicial power of the United States' . . . should be continued during any funding lapse."

—Guide to Judiciary Policies and Procedures

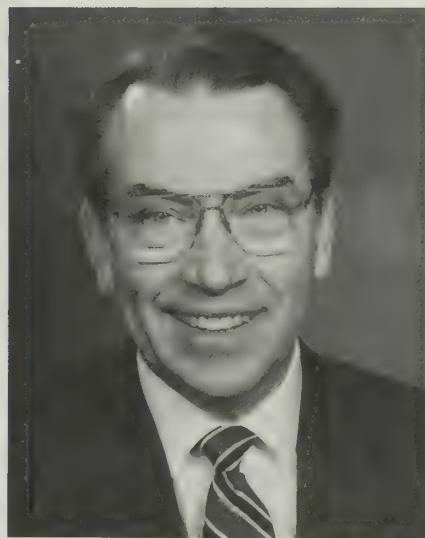
early unique occurrence. Typically, Congress responds by agreeing to a stop-gap measure and quickly sends a continuing resolution to the President's desk. However, that also appears much less likely to happen this year, leaving the federal government in the uncommon position of operating during a funding lapse. There have been brief funding lapses in the past. However, since the President and Congress hold strong and opposing positions on a number of funding issues, the lapse could be longer this year.

guidelines based on the Anti-Deficiency Act and the Constitution. Several circuits have formalized adoption of the guidelines by issuing court orders.

The guidelines recognize the unique situation of the Judiciary and anticipate that all activities "essential to maintain and support the exercise of the judicial power of the United States will continue." The actual decision as to the retention of court personnel is left to each court.

The guidelines specify that the
See Funding on page 2

Senator Grassley Discusses Agenda



Senator Charles E. Grassley

Senator Charles E. Grassley (R-Iowa) was elected to the U.S. Senate in 1980, and became a member of the Judiciary Committee in 1981. Today, Grassley serves as Chairman of the Subcommittee on Administrative Oversight and the Courts. Grassley served as the only non-lawyer on the Federal Courts Study Committee, the first such review of the federal Judiciary in over 200 years.

Q: As chair of the Judiciary's Subcommittee on Administrative Oversight and the Courts, you have broad jurisdiction. Are

See Interview on page 10

INSIDE

Representative Moorhead to Retire 2
Judicial Conference Committee Chairs Named 3
Magistrate Judges Help Manage Workload 4

Funding continued from page 1

courts of appeals, district courts, and the Judicial Panel on Multi-district Litigation should continue to hear all cases according to normal schedules and priorities. Each judge may employ that portion of personal staff that in the court's opinion is "essential" to the resolution of cases and all essential case supporting services provided by magistrate judges, clerks, probation officers, and others. Bankruptcy courts should continue only those operations that may be considered part of the exercise of the judicial power of the U.S. or which preserve life or property. The

judges of each bankruptcy court shall determine which personnel will be needed. Under the Constitution, Article III judges are entitled to their salaries regardless of any lapse in appropriations.

All personnel services not related to the performance of Article III functions should be suspended, according to the guidelines. Incurring new obligations such as the acquisition of equipment, the hiring of new personnel, and travel should be avoided unless absolutely essential to the resolution of cases and controversies. Non-essential or non-exempt employees should be fur-

loughed temporarily.

To plan for a possible funding lapse, it is recommended that courts:

- immediately evaluate their travel requirements and plans for the beginning of FY 96;
- advise the U.S. Marshal and the General Services Administration building managers of the level of services that will be required to maintain continuing operation of the court system;
- consider formally adopting the model guidelines for operating in the absence of an appropriation by issuance of an appropriate local order; and
- inform the bar and the U.S. attorneys office of any changes in normal practice during this period.

The Judiciary's FY 96 funding bill passed the House in late July. It provides a 4.8 percent increase over the FY 95 funding level, but is 8.8 percent short of the amount requested for the coming fiscal year. Chief Judge Richard S. Arnold (8th Cir.), chair of the Judicial Conference's Budget Committee, has written to Senator Phil Gramm (R-TX), chair of the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, to seek restoration of the necessary funds.

As *The Third Branch* went to press, the Senate Appropriations Committee was scheduled to consider the courts' funding measure. In its mark-up, the Senate subcommittee restored about half of the funds appealed by the Judiciary. The subcommittee's mark for Salaries and Expenses and the Crime Trust Fund is \$50.6 million more than the amount passed by the House. As is the case with its House counterpart, the Senate bill prohibits the expenditure of funds for Post Conviction Defender Organizations in FY 96. In total, the Senate subcommittee would fund the judicial branch at 6.6 percent more than the FY 95 enacted level. ⚡

Moorhead Announces Retirement



Representative Carlos J. Moorhead

Carlos J. Moorhead (R-CA), chairman of the House Judiciary Committee's Subcommittee on Intellectual Property and Judicial Administration, has announced he will not seek reelection next year.

Moorhead, 74, was first elected to the House in 1972. In announcing his retirement, he noted several of the high points of his career. "It was my privilege," said Moorhead, "to serve with leading jurists of our nation, as

an appointee to the Federal Courts Study Committee. Many of our recommendations now have been passed into law." He also mentioned memorable assignments on the Judiciary Committee. In his 13 years as ranking minority member of the subcommittee, Moorhead worked closely with former chairs William J. Hughes and Robert W. Kastenmeier on a variety of legislation that has benefited or represented the interests of the courts, including most recently, the 1994 Judicial Amendments Act. "In the 104th Congress," Moorhead noted, "a number of bills which I have authored have been approved by the subcommittee, including judicial reform measures which were a part of the Contract with America." Moorhead also co-sponsored H.R. 1989, the proposed Federal Courts Improvement Act of 1995. During his brief tenure as subcommittee chair, he has been particularly concerned with an increasing federal court workload due to the federalization of state issues and in legislation to expand court-annexed arbitration programs.

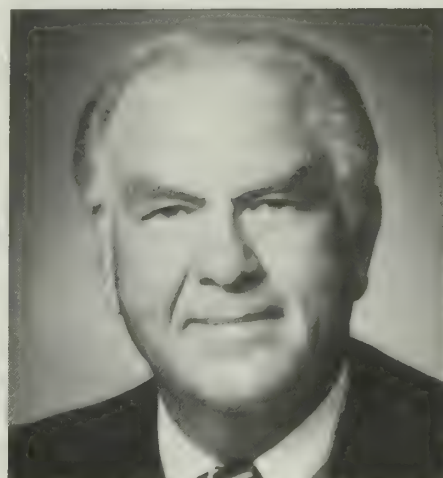
Chief Justice Makes Judicial Conference Committee Appointments

The Chief Justice has named four new Judicial Conference committee chairs, appointed two new members to the Conference's Executive Committee, and extended one chairman's term. Appointments are effective October 1, 1995.

Chief Judge Michael M. Mihm (C.D. Ill.) and Judge Clarence A. Brimmer (D. Wyo.) will succeed Judge Charles L. Brieant Jr. (S.D. N.Y.) and Chief Judge Morey Sear (D. La.) on the Executive Committee. The term of Judge Ralph K. Winter Jr. (2d Cir.) as chairman of the Advisory Committee on Evidence Rules has been extended one year.



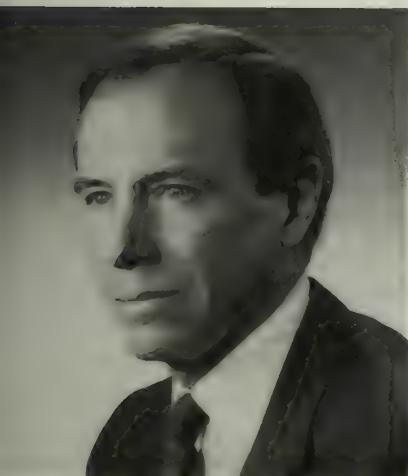
Judge Clarence A. Brimmer (D. Wyo.), Executive Committee



Judge Stephen H. Anderson (10th Cir.), Committee on Federal-State Jurisdiction, succeeding Judge Stanley Marcus (S.D. Fla.)



Chief Judge Michael M. Mihm (C.D. Ill.), Executive Committee



Judge A. Raymond Randolph (D.C. Cir.), Committee on Codes of Conduct, succeeding Judge R. Lanier Anderson (11th Cir.)



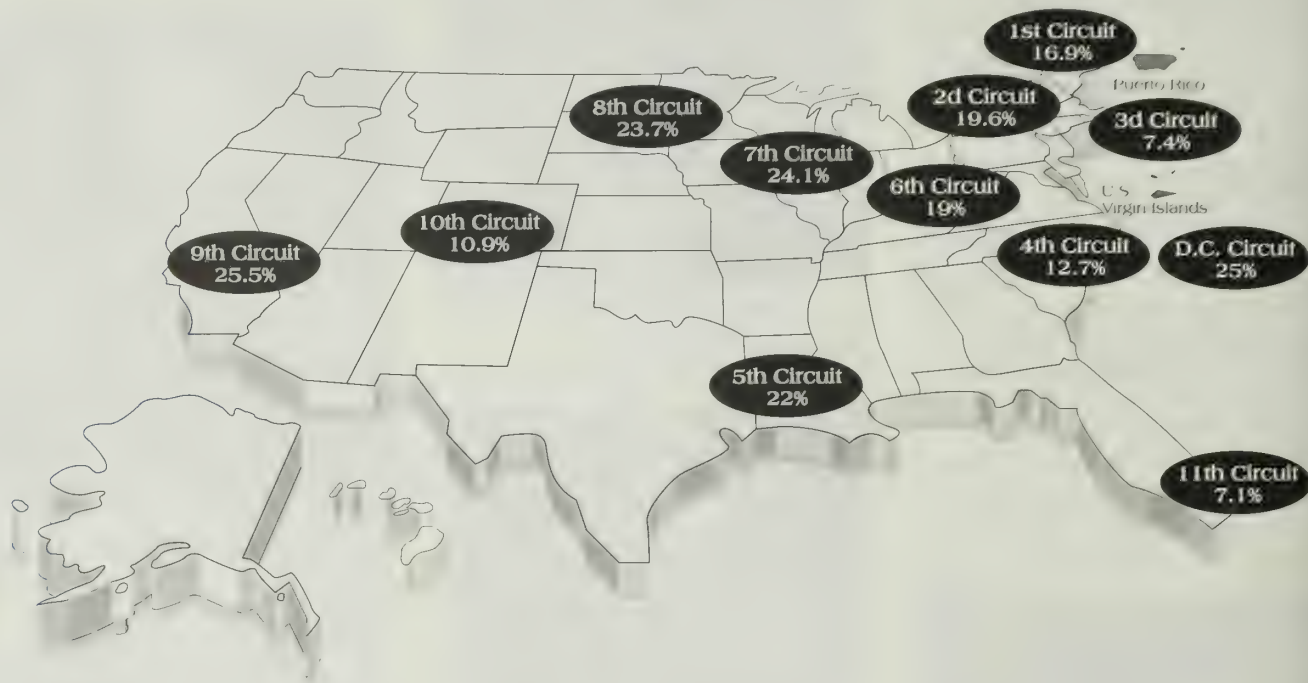
Judge Cynthia H. Hall (9th Cir.), Committee on International Judicial Relations, succeeding Chief Judge Michael Mihm (C.D. Ill.)



Judge Emmett R. Cox (11th Cir.), Committee on Defender Services, succeeding Judge Gustave Diamond (W.D. Pa.)

Magistrate Judges Ease Civil Trial Workload

Percentage of Civil Trials Conducted by Magistrate Judges
(One-year period ending September 30, 1994)



Magistrate judges presided at 912, or 17.2 percent of the civil jury trials held in the federal courts for the one-year period ending September 30, 1994, according to statistics compiled by the Administrative Office. The percentages by circuits range from a high of 25.5 percent to a low of 7.1 percent. (See map.) "Lawyers increasingly have been urging their clients to consent to trial before magistrate judges in civil cases," said Magistrate Judge Robert Collings (D. Mass.), who has been following the numbers. "In many districts, magistrate judges can set an earlier trial date than a district judge, and the trial date is a firm one." Magistrate judges do not preside at criminal felony trials, and this may allow them more time to devote to civil cases. Said Collings, "Litigants who consent to a trial before a magistrate judge do not risk

the danger of having their civil trial date usurped by a criminal jury trial, which has to take precedence."

District courts have used different techniques to expand the use of magistrate judges to conduct civil trials. A number have found that initially assigning a case to both a magistrate judge and a district judge makes consent more likely because it identifies the magistrate judge who would preside at the trial, if the parties consent. Other courts have adopted a system where a certain percentage of civil cases are directly assigned to a magistrate judge and only if consent is not forthcoming is the case assigned to a district judge.

In addition to civil jury trials, magistrate judges conducted 831 bench trials and disposed of 6,092 civil consent cases without trial, conducted 1,795 evidentiary hearings in prisoner cases, 774 evidentiary hear-

ings in non-prisoner cases, and 242 evidentiary hearings as special masters.

Since 1979, magistrate judges have been authorized by law to try civil cases with the consent of the parties. Appeals from judgments entered by magistrate judges after trial are to courts of appeals, unless the parties explicitly stipulate that the appeals will be to a district judge. In Collings' Massachusetts court, two district judges and a magistrate judge were paired for an experiment where the judges try a list of civil cases during a particular month without regard to whom the case was originally assigned. Details of other plans and mechanisms for assigning civil cases to magistrate judges may be obtained from the AO's Magistrate Judges Division at (202) 273-1830.

Vulnerability of Federal Buildings Assessed

The Department of Justice (DOJ), with the General Services Administration (GSA), has completed an assessment of the vulnerability of federal office buildings. The national study was conducted at the direction of the President following the April 1995 bombing of the Alfred P. Murrah Federal building in Oklahoma City. The study found that the majority of federal facilities did not meet new minimum security standards. However, federal courthouses either meet or exceed these standards, largely because of the presence of court security officers at courthouse entrances.

The DOJ assigned two working groups to the vulnerability study, one group to survey the approximately 1,330 federal buildings in the continental U.S., and a second group to identify and evaluate the types of useful security measures.

Federal facilities were divided into five security levels based on size, number of employees, building type, and required access to the public. Most buildings housing federal courthouses fell within Level IV. (An example of a Level V building, the highest security level, would be the Pentagon.)

Level IV facilities are large multi-tenant, multistory, federally owned or leased buildings with over 450 employees. Typically the facilities are guarded, set back from the street, have interior underground parking, require access by employees more than 12 hours a day while remaining open 24 hours a day, and allow public access less than 12 hours a day. The study recommends that security at all federal facilities be upgraded to meet the standards commended for their designated levels, while Level IV facilities should also:

- control adjacent parking as much as possible;

- employ 24-hour closed circuit television with monitoring and videotape recording of the building's perimeter, with signs publicizing the use of this equipment;

- mandate that agency photo identification cards be displayed at all times;

- have shatter-resistant exterior glass; and

- require x-ray screening of all mail and packages.

The report also called for each facility to form its own building security committee. These committees, according to the report, are best able to evaluate and apply the recommended standards to individual facilities, while identifying building-

specific security issues. The GSA has been instructed to coordinate the creation of the building security committees with the court security committees already in existence in courthouses. The GSA also has commissioned a panel of engineers and security experts to review the DOJ's report, and offer recommendations on immediate actions the GSA might take to increase federal building security. At the GSA's request, a meeting was held in Washington in July, organized by the National Institute of Building Sciences (NIBS), to supply expert recommendations for the *U.S. Courts Design Guide* on security for existing and new federal courthouses.

Leo Levin Receives Justice Award



(L to R) Judge Stanley S. Brotman (D. N.J.) presented A. Leo Levin with the American Judicature Society's Justice Award.

The American Judicature Society has given its Justice Award to A. Leo Levin, professor of law at the University of Pennsylvania. The award honors Levin's efforts to improve the administration of justice in the U.S. Levin was direc-

tor of the Federal Judicial Center from 1977 to 1987.

Levin was the founding director of the National Institute for Trial Advocacy, and executive director of the Commission on Revision of the Federal Court Appellate System.

ABA Resolutions Address Issues of Interest

At its annual meeting last month, the American Bar Association's House of Delegates acted on the following resolutions, which may be of interest to the Judiciary.

■ Unanimously adopted the report of the ABA's Standing Committee on Federal Judicial Improvements concerning the *Judiciary's Proposed Long Range Plan for the Federal Courts*, but deferred action on sections of the report dealing with plan recommendations on administrative agency and Article I adjudication; non-acquiescence and relitigation in appellate courts; discretionary access to the federal courts; and judicial review of administrative action. In general, the House endorsed the plan and its specific provisions, and it encouraged the Judiciary's efforts to plan for the future.

■ Approved a resolution urging the National Bankruptcy Review Commission, the Judicial Conference, and the Senate and House Judiciary Committees among others to evaluate the bankruptcy appellate system and develop long-term solutions. Some of the recommended approaches in the Judiciary's long range plan were cited.

■ Approved a resolution urging federal, state, territorial, and local courts to provide computer on-line access to court and docket information to members of the profession and to the general public at no direct cost to the user. In March 1995, the Judicial Conference discussed this issue and approved an advisory note to grant exemptions from fees for users who might otherwise not have access to the information in electronic form. The Conference also voted to reduce the \$1 per minute fee to 75 cents per minute. Congress has directed the Conference to prescribe reasonable fees for the access.

■ Approved a resolution that the ABA oppose legislation that would require a 3-judge district court to hear applications for interlocutory or permanent injunctions when the constitutionality of a state law passed by referendum is challenged and require direct appeal of such actions to the U.S. Supreme Court. The House of Representatives is presently considering H.R. 1170, which contains this language.

■ Supported proposed reforms of the Social Security disability adjudication process. The reforms would help eliminate the backlog faced by Social Security administrative law judges. The House of Delegates supported a substitution that recommended every claimant for disability benefits continue to be entitled to a due process hearing, on the record, before an administrative law judge.

■ Passed a resolution endorsing in principle the U.S. Sentencing Commission's proposal to amend the federal sentencing guidelines to eliminate current differences in sentences based upon drug quantity for crack versus powder cocaine offenses and assign a greater weight in sentencing to other factors such as weapons use, violence, or injury.

■ Approved a recommendation that the U.S. Sentencing Commission adopt and publish internal rules of practice and procedure, including those commonly used by other rulemaking agencies, to invite and structure public participation, disclose information, and justify promulgated rules.

The Conference of Chief Justices also convened its annual meeting last month and passed two resolutions of particular interest to the federal courts. One resolution expressed the Chief Justices' opposition to legislation that would expand federal criminal law jurisdiction to encompass homicides and other violent

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state felonies involving firearms. "Such expansion of federal jurisdiction would raise serious constitutional issues, threaten long-accepted concepts of federalism, and ignore boundaries between appropriate state and federal action," the resolution stated.

The Conference of Chief Justices also approved a resolution urging the judicial leadership of each state in which the death penalty is authorized to "initiate a broad-based, interdisciplinary planning program establish standards and a process that will assure the timely appointment of competent counsel, with adequate resources, to represent defendants in capital cases at each stage of such proceedings."

SEPTEMBER

19-20 Tuesday-Wednesday
Judicial Conference of the United States

20-22 Wednesday-Friday
Workshop for Magistrate Judges of the 5th, 8th, 11th,
and D.C. Circuits

OCTOBER

2-3 Monday-Tuesday
Committee to Review Circuit Council Conduct and
Disability Orders

15-17 Sunday-Tuesday
Seventh Circuit Conference

16-17 Monday-Tuesday
Advisory Committee on Criminal Rules

19-21 Thursday-Saturday
Advisory Committee on Appellate Rules

23-27 Monday-Friday
Video Orientation for Newly Appointed District Judges

23-27 Monday-Friday
Orientation for Newly Appointed Magistrate Judges

ASSISTANT DIRECTOR FOR AUTOMATION & TECHNOLOGY, Administrative Office of the U.S. Courts

This senior executive manages the information resources programs for the federal Judiciary. The incumbent serves as the IRM Officer for the Judiciary and, as such, is responsible for planning, developing, administering and evaluating all long- and short-term IRM activities. Serves as the principal IRM advisor to management of the Administrative Office, to federal court officials, and to various committees and subcommittees of the Judicial Conference of the U.S., and acts as principal agency spokesperson for IRM policy matters. Applicants must have experience in managing complex, multimillion dollar IRM programs, including at least one year of experience, either public or private sector, which is equivalent to at least the GS-15 level in the federal service. Applicants must also have demonstrated leadership skills. Salary range is \$97,991 - \$122,040. Interested candidates must submit an application (e.g., OF-612, resume, etc.) referencing announcement #95-OAT-096 to be received in the AO Personnel Office no later than **October 6, 1995**. Send applications to the Administrative Office of the U.S. Courts, AOISD-AOPB, One Columbus Circle, NE, Suite G-200, Washington, D.C. 20544. Applicants are strongly encouraged to submit a supplemental statement addressing the quality ranking factors listed on the job opportunity announcement. Call 202-273-2771 to request a copy of the announcement.

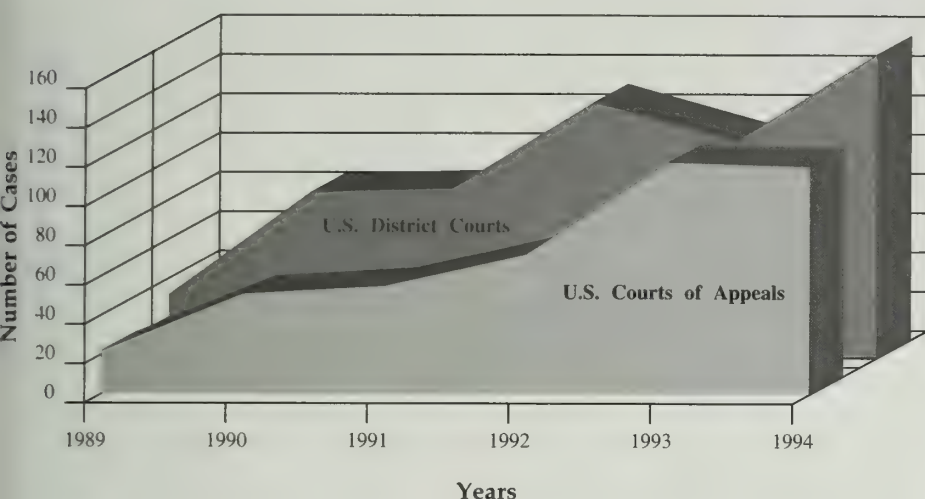
CLERK OF COURT, Western District of Michigan

The Clerk of Court, who operates under the direction of the Chief Judge and the court, supervises a staff of 50-60, dependent upon allocation. Headquarters is located in Grand Rapids, with divisional offices in Kalamazoo, Lansing, and Marquette. Applicants must have ten plus years of progressively responsible administrative experience in public administration or business, at least five years of which must have been in a position of substantial management responsibility. Court experience and a master's degree in public administration or a related field are preferred. The resident station will be Grand Rapids, but may change in the future. Salary: \$94,000-\$112,242. Interested applicants should submit a letter of application, an SF 171, and a current resume (original and three copies) to Clerk of Court Search Committee, c/o Kristen Russo, U.S. District Court, Western District of Michigan, Room 452, 110 Michigan, N.W., Grand Rapids, MI 49503. Applications must be received by **September 30, 1995**. Open until filled.

EQUAL OPPORTUNITY EMPLOYERS

Death Penalty Caseload Studied

Death Penalty Cases Filed



The federal courts handle relatively few death penalty cases when the number of such cases is compared to the total caseloads in district courts and courts of appeals. However, the cases tend to be complex in nature and place disproportionate demands on the system. Of the 43,193 appeals filed in 1994, 421 of those appeals were habeas corpus prisoner petitions. Of that number, 116 were related to death penalty convictions. In the district courts, 238,590 civil cases were filed in 1994, of which 13,698 were habeas corpus prisoner petitions. Of those, 155 were death penalty related.

Because the numbers are low, small changes in the numbers of cases can result in deceptively large percentage changes. For example, over the last 6 years, death penalty cases filed in both the district courts and courts of appeals have increased approximately 400 fold. This is an increase in the number of cases from

54 in 1989 to 271 in 1994.

The greatest numbers of death penalty cases/appeals in the year ended December 30, 1994, were filed in the Fifth (46 in district courts, 37 in courts of appeals), Ninth (32 in district courts, 6 in courts of appeals), Eighth (12 in district courts, 23 in courts of appeals), Eleventh (15 in district courts, 17 in courts of appeals), and Fourth (10 in district courts, 20 in courts of appeals) Circuits.

Over the last six years, from 65 to 100 percent of the death penalty appeals closed in the courts of appeals were affirmed. A very small number of these appeals were dismissed or remanded, and the number of appeals reversed was well under 20 percent. In 1994, 75 percent of the cases were affirmed, only 17 percent of the cases were reversed, 4 percent were dismissed and none were remanded.

Judicial Fellows Sought for 1996-97

The Judicial Fellows Commission seeks outstanding individuals who are interested in working in Washington, D.C., within the federal Judiciary. Fellows spend one calendar year (beginning late August/early September 1996) at the Supreme Court of the United States, the Federal Judicial Center, the Administrative Office of the United States Courts, or the United States Sentencing Commission working on various projects concerning the federal court system and the administration of justice. Four fellows will be chosen.

Candidates must be familiar with the judicial system, have at least one postgraduate degree, and two or more years of professional experience with high achievement. Multidisciplinary training and experience is desirable.

Salary is based on education and experience, not to exceed government pay schedule, GS-15, step 3, presently \$74,426.

To apply, candidates must submit a resume, a 700-word essay explaining their interest in the program, copies of two publications or other writing samples, and three reference letters forwarded directly to the program. The application deadline is November 17, 1995. Materials should be submitted to the Administrative Director, Judicial Fellows Program, Supreme Court of the United States, Washington, D.C., 20543, (202) 479-3415

Imaging Secret to Success of Central Violations Bureau

If one of the rules of efficient office management is "Never handle a piece of paper twice," then the San Antonio Central Violations Bureau (CVB) is a model of efficiency. With the anticipated elimination of the only other bureau in Denver, Colorado, the San Antonio, Texas bureau will soon be the sole processing center for one-half million federal tickets issued annually—and it will do the work of both bureaus with fewer people.

How? In a word, imaging.

Tickets are issued on federal property for such violations as speeding or for property damage; for example, cutting down a tree in a federal park. District courts sent these tickets to the Central Violations Bureaus where they were manually paired with the violator's ticket copy and payment.

Now at the San Antonio bureau, a computer imaging system eliminates the paper handling. A picture of the ticket is scanned into a computer system where it appears on a split screen, side by side, with the form on which the clerk enters data. Tickets, 50 to 100 at a time, can be stacked in a hopper for scanning, removing even this manual task. The new imaging system is estimated to save the equivalent of eight full-time positions, allowing fewer people to do at the San Antonio bureau what 45 people once did in two national bureaus.

Chuck Vagner, who oversees the San Antonio bureau, estimates that in the old system tickets were handled between two and eight times. "With the imaging system," said Vagner, "the tickets and payments are scanned as soon as they come into the bureau. Then clerks don't have to find data, refile, or look up and down from the screen. It's all right there."

The system is a success, but Gary Bockweg, deputy chief of the Administrative Office's Technology En-

hancement Office (TEO), was initially cautious. "Imaging isn't always the answer," he explained. "That's why we began by conducting a work flow study to see how long it took to perform certain tasks." Vagner also had anticipated the Denver consolidation would force his bureau to do more with less, so he looked at ways to streamline. Instead of processing tickets by district, he discovered it was more efficient to consolidate tasks such as entering ticket data, recording payments, or generating reports. An analysis of the bureau's workload also identified a heavier workload in summer months, and temporary help is now being used to meet needs during this peak time.

Vagner's major concern, however, was that his relatively small staff would be unable to handle the workload when the Denver bureau was phased out by December 1995. The TEO team helped to confirm that computer imaging was the best solution to this problem and then developed the software and supplied the hardware for the imaging system. The cost of hardware and software was \$70,000 with an additional \$80,000 in personnel costs for TEO programming and analysis, and San Antonio specifications, testing, and staff training. The cost will be recouped quickly by the eight positions the system saves.

The bureau's computer imaging system is designed to link with the current automated system. For now, that means it can generate financial reports, but plans for the future could include ticket payment reports for magistrate judges that are produced in days not weeks, with more accurate information on overdue payments. "We're very pleased with the way the TEO's programming has worked," said Vagner. "Of course, we're learning as we go. We've only been on the system since

June 19, and there will be some adjustments. But already we've seen some huge improvements in the time spent on processing." They had anticipated that the time for scanning and data entry would be roughly the same for the new system as it was for data entry in the old system. However, in the first week that clerks used the imaging system, their data entry times were twice as fast. "That was a pleasant surprise to us," admits Bockweg. "There was a very smooth transition to the new system. I'd credit that to the teamwork of the CVB and TEO staff, and to the AO's District Court Administration Division, which guided the project through the life-cycle management process. In the end, people were very happy with a final product we were able to deliver in four months. But the most important finding is that the system appears to be on target to deliver the benefits that we expected."

JUDICIAL BOXSCORE

As of September 1, 1995

Courts of Appeals	
Vacancies	12
Nominees	5
District Courts	
Vacancies	43
Nominees	15
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	1

1995-96 Judicial Fellows Selected



Paul W. "Whit" Cobb, Jr.

The Judicial Fellows for 1995-96 are Paul W. "Whit" Cobb, Barry Ruback, and Alex Wohl. Established by Chief Justice Burger in 1973, the Judicial Fellows Program selects individuals from a variety of disciplinary backgrounds for a year-long fellowship with a national institution of the federal Judiciary. The program is designed to give Fellows the opportunity to study the administration of the federal Judiciary and interbranch relationships, while providing exposure to current policy issues. Fellows are selected by a panel appointed by the Chief Justice.

Along with individual characteristics that show a prospective fellow to be bright, energetic, and highly motivated, the panel also looks for multidisciplinary training, familiarity with the judicial process, two or more years of professional experience, and at least one post-graduate degree. The 1995-96 fellows program begins in the fall of 1995.

Paul W. "Whit" Cobb, Jr. will be the Judicial Fellow at the Administrative Office. A captain in the U.S. Army, he has served as an assistant to the General Counsel of the Army since 1991. In this capacity, he was responsible for providing legal and policy advice to the Army Secretary and staff. From 1990-1991,

Cobb clerked for Judge Thomas A. Clark (11th Cir.). Cobb received his law degree from Yale Law School in 1990, where he was executive editor of the *Yale Law Journal*. For his note entitled "Reviving Mercy in the Structure of Capital Punishment," he received the Michael Egger Prize for the best student contribution to the journal on an issue of social importance. Cobb is also the co-author of a biography-in-progress on Justice Louis D. Brandeis.

Alexander Wohl will be the Judicial Fellow at the Supreme Court of the U.S. Wohl is currently a speechwriter and special assistant to the

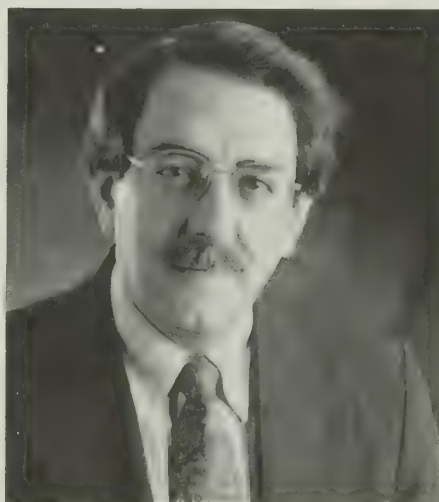


Alex Wohl

Secretary of Education. After receiving his undergraduate degree from Brandeis University in 1983, Wohl was editor of the *Boston Jewish Times* for two years before joining the staff of Congressman Stephen J. Solarz as chief domestic legislative assistant and assistant press secretary. In 1990, he earned his law degree from the Washington College of Law, American University, and was a law clerk to Judge Ralph B. Guy, Jr. (6th Cir.). From 1991 to 1993, he was an associate in the public sector litigation section of the law firm of Dickstein, Shapiro & Morin. Wohl is a frequent contributor to the *Ameri-*

can Bar Association Journal and the author of several law review articles.

R. Barry Ruback will serve as the Judicial Fellow with the U.S. Sentencing Commission. A Professor of Psychology and Criminal Justice at Georgia State University, Ruback has a Ph.D. in psychology from the University of Pittsburgh. He earned his undergraduate degree from Yale University in 1972 and a law degree from the University of Texas in 1975. Ruback has been a 1985 Fulbright Fellow; a 1988 Indo-American Fellow; a 1991 Fulbright-Hays Fellow, conducting research in India; and a 1993 Fulbright South Asia Regional Scholar, studying in Bangladesh, India, and Pakistan. In 1986, he was a Visiting Fellow at the U.S. Department of Justice under a program sponsored by the National Institute of Justice. In addition to articles on psychology and law, he is the co-author of two books, *Social Psychology of the Criminal Justice System*, and *After the Crime: Victim Decision Making*. He is a member of the editorial boards of *Law and Human Behavior*, *Violence and Victims*, *Criminal Justice and Behavior*, and the *Journal of Social Issues*.



R. Barry Ruback

Interview continued from page 1
there specific areas you expect to be your focus during the 104th Congress?

A: The subcommittee does have very broad jurisdiction. Not only do the federal courts come under our jurisdiction, but general oversight over agency procedures and the administrative process are also included. Agency issues, such as regulatory reform and the reauthorization of the Ad-

Q: After serving as the ranking minority member, you now have taken over as chair. Are we likely to see a different style and approach from that of the former chair, Senator Heflin?

A: I have enjoyed for many years the opportunity to serve as ranking minority member of the subcommittee under Senator Heflin's able leadership. He and I share common perspectives on many of the issues affecting the

"[I]t is also my goal to focus on efforts which would make the courts function more effectively and efficiently."

ministrative Conference have taken much of the subcommittee's time and effort so far this year. We've also dealt with tort reform issues and will, hopefully, continue to do so this year.

However, it is also my goal to focus on efforts which would make the courts function more effectively and efficiently. I hope to consider carefully S. 1101, the Federal Court Improvements Act, recommended by the Judicial Conference. I would hope to at least start the hearing process later this year and report something out of subcommittee by early next year.

Beyond pursuing a permanent version of the Agency Dispute Resolution Act, which I authored in 1990, I would also like to consider implementing an expanded and permanent alternative dispute resolution program in the courts. Finally, I intend to explore a variety of ways to ensure that taxpayers' money is spent wisely.

courts. I look forward to working productively with him through next year. As far as a difference in approach, there will, inevitably, be differences in the way we approach the chairmanship.

To begin, we come from very different backgrounds. Before coming to the Senate, Senator Heflin served as the Chief Justice on the Alabama Supreme Court. On the other hand, I was a factory worker and a farmer before being elected to the House of Representatives and then to the Senate. Nevertheless, I think we tend to agree on more subjects than we disagree on.

Q: You have expressed an interest in cost savings within the Judiciary. Are there specific areas that are the subject of your focus, and if so, why?

A: Recently, concerns about costs in the federal courts

have been brought to my attention by federal judges themselves, as well as members of the media. In fulfilling my responsibilities as subcommittee chairman, this spring I requested a review of some of these costs by the General Accounting Office (GAO). As Congress works to downsize the entire federal government and balance the budget, we have to examine all possible reforms for cost effectiveness in each branch of government.

Certainly, everyone in public life owes it to the taxpayers to be scrupulous about all federal spending, whether it involves thousands or billions of dollars. If we can streamline and save money we ought to do so. And, if there's wasteful, unnecessary or duplicative spending, it ought to be eliminated. To date, my interest has been expressed by asking questions. I just want the facts. Informed and respected individuals have concerns, and they deserve answers. To do anything less than to pursue such legitimate concerns would be a failure to fulfill my responsibilities.

Q: Do you see a role for the authorizing committees in assuring that the Judiciary receives the necessary resources to carry out the duties it is assigned by Congress?

A: Without a doubt, the authorizing committees should be involved in a consulting capacity during the appropriations process. After all, authorization isn't much good without the appropriation.

Q: The federal Judiciary would like to do all it can to enhance communication between the judicial and legislative branches of government. What type of input

Appointed: E. Thomas Boyle, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of New York, July 31.

Appointed: William E. Callahan Jr., as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Wisconsin, August 1.

Appointed: Catharine R. Carruthers, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Middle District of North Carolina, July 24.

Appointed: Andre M. Davis, as U.S. District Judge, U.S. District Court for the District of Maryland, August 14.

Appointed: Carlos F. Lucero, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Tenth Circuit, July 22.

Appointed: William Norton Mason, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of North Carolina, August 14.

Appointed: William K. Sessions III, as U.S. District Judge, U.S. District Court for the District of Vermont, August 15.

Appointed: Ortrie D. Smith, as U.S. District Judge, U.S. District Court for the Western District of Missouri, August 17.

Appointed: C. Michael Stilson, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Alabama, June 16.

Appointed: Lonny R. Suko, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Washington, August 1.

Appointed: Diane P. Wood, as U.S. Court of Appeals Judge, U.S. Court of Appeals of the Seventh Circuit, July 24.

Elevated: Magistrate Judge Catherine C. Blake, to U.S. District Judge, U.S. District Court for the

District of Maryland, August 14.

Retired: Magistrate Judge James B. Hovis, U.S. District Court for the Eastern District of Washington, July 31.

Resigned: U.S. Magistrate Judge Charles K. McCotter, Jr., U.S. District Court for the Eastern District of North Carolina, August 10.

Senior Status: Judge Harold H. Greene, U.S. District Court for the District of Columbia, August 6.

Deceased: Chief Bankruptcy Judge Jerry G. Tart, U.S. Bankruptcy Court for the Middle District of North Carolina, July 21.

Deceased: Senior Judge John H. Pratt, U.S. District Court for the District of Columbia, August 11.

Deceased: Judge Carl B. Rubin, U.S. District Court for the Southern District of Ohio, August 2.

from the Judiciary would you consider helpful in the consideration of legislation?

A: Even with the constitutional requirement for a separation of powers, the three branches certainly have some overlapping authority and interests. So, mutual communication is a necessity. I have a responsibility to seek out information and answers from members of the Judiciary. At the same time, judges have a responsibility to come to Congress with their input on issues affecting the Judiciary.


Q: In the past, you have supported legislation expanding

the use of arbitration in the federal courts. What, if any, activity, do you expect on this issue in the 104th Congress?

A: As I noted earlier, I have been a strong supporter of court-annexed arbitration, and I want to pursue legislation expanding and extending the current program.

Q: While the Judiciary plays no role in the nomination and confirmation of judges, it does have an interest in filling vacancies as quickly as possible. The Senate Judiciary Committee confirmed 101 nominees last years and 37 thus far in 1995. Is there a reason for the dis-

crepancy over the past two years? Do you expect the pace at which nominees are confirmed to slow down as we approach the 1996 election?

A: I don't know that there is a discrepancy other than that which may inevitably occur when there is change over in the leadership in Congress, as we saw after the elections in 1994. Naturally, one must expect a transition period. In addition, there are a number of vacancies for which nominations have not been made by the Administration. Looking ahead to next year, one might expect the confirmation process to slow somewhat as it is a presidential election year. 

Present and Future Committee Chairs Meet With Mecham



(L to R) AO Director L. Ralph Mecham met with Federal-State Jurisdiction Committee Chair Judge Stanley Marcus (S.D. Fla.), and the incoming chair, Judge Stephen H. Anderson (10th Cir.), who will begin his term on October 1.

THE THIRD BRANCH

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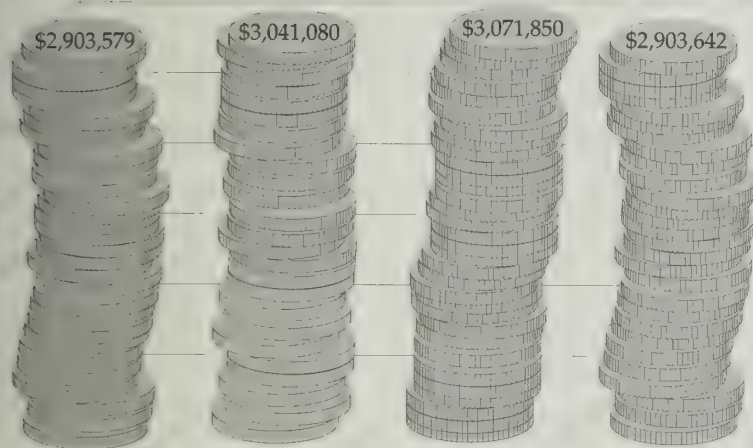
Vol. 27

Number 10

October 1995

Temporary Funding Keeps Judiciary Running

Judiciary Funding
(In thousands of dollars)



FY 95
Enacted

FY 96
House Passed

FY 96
Senate Passed

FY 96 Continuing
Resolution

Once again the federal government is operating under a continuing resolution, narrowly averting what pundits had referred to as the October 1 "train wreck." However, the resolution simply allows the government to continue its work until November 13. The fact remains that many of the 13 appropriations bills continue to be plagued by

highly divisive issues. As a result, some observers speculate that the continuing resolution simply postponed the "train wreck" by six weeks.

November 15 is thought to be the date when the U.S. Treasury will run out of authority to borrow money. If Congress and the Admin

See *Funding* on page 2

Busy Conference Discusses Plan

The Judicial Conference last month approved a lengthy series of recommendations from its *Proposed Long Range Plan for the Federal Courts* relating to federal court jurisdiction, adjudicative structure, governance, the allocation of resources, and other aspects of federal court operations and administration.

The Conference formally received the long range plan at its March 1995 meeting. It gave members until mid-April to review the plan and identify items for further study by Conference committees. As a result, nearly two-thirds of the plan was approved with little or no change. The remaining recommendations were submitted to the Conference at its September 1995 meeting. A final version of the approved plan will be published later this year. The plan represents the culmination of a four-year-long process and is the first comprehensive long range plan for the federal court system. A summary of the Conference's actions regarding the plan appear on page 4.

In other action, the Conference:

- Approved the report on death penalty representation adopted by

See *Conference* on page 4

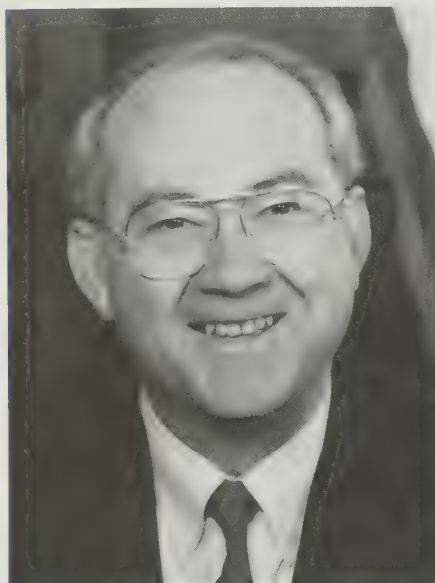
INSIDE

Conference Acts on Long Range Plan
Key Legislation Moves in Both Houses
EPA Usage Surveyed

4
5
9

Funding continued from page 1

istration cannot resolve this issue, the government will be unable to pay its bills. While some advocate a simple increase in the debt limit, others say the limit should not be raised without also agreeing to a blueprint for a balanced budget by the year 2002. The budget reconciliation process likely would mean that Medicare, Medicaid, and other controversial programs would be the subject of much debate.



Senator Phil Gramm

While the Commerce, Justice, State and the Judiciary appropriations bill has passed both houses, some major sticking points remain. As Congress and the Administration continue to negotiate their many differences, the continuing resolution sets funding levels at the average of the House-passed and Senate-passed FY 96 funding bill, less 5 percent. This means that the Judiciary will be operating at approximately \$2.903 billion, just a fraction above the FY 95 enacted level. The House previously had passed a bill that would fund the judicial branch at \$3.041 billion for FY 96.

Late last month, the Senate approved the Judiciary's FY 96 fund-

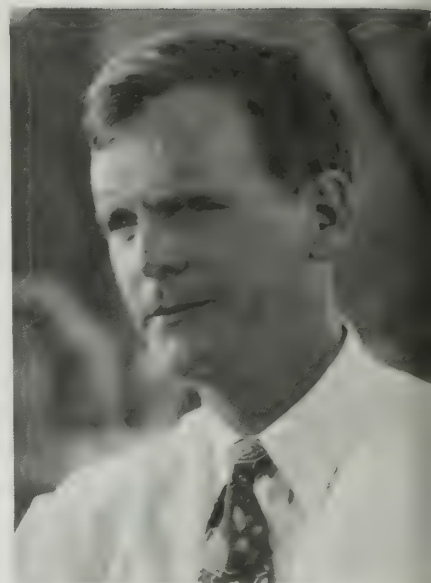
ing bill at \$3.071 billion. There are several differences between the House and Senate bills. For instance, while the House provides no FY 96 funds for Post Conviction Defender Organizations (PCDOs), the Senate bill would allow the PCDOs six months to "wind-down." And, while the House adopted only one floor amendment during its debate on the spending measures, the Senate approved several floor amendments of interest to the Judiciary.

One, offered by Senators Charles E. Grassley (R-IA) and Jon Kyl (R-AZ), will require that in order to use appropriated funds, circuit judicial conferences must take place within the geographic boundaries of the circuit. The amendment also placed a \$100,000 cap on the funds to be appropriated for a circuit conference and urged chief circuit judges to "use new telecommunications technologies to conduct judicial conferences." Circuit conferences and attendance by judges at the conferences would no longer be mandatory under the Senate amendment.

"As chairman of the Subcommittee on Administrative Oversight and the Courts, I am concerned about the budgetary propriety of continuing current practice with regard to judicial conferences in this new era of balanced budgets and streamlined government," Grassley said in a statement on the Senate floor.

Senator Joseph R. Biden, Jr. (D-DE) opposed the Grassley amendment. "The Judiciary is an independent branch of government, and it should be permitted to make reasonable decisions about how to spend the money that Congress appropriates to it without undue interference," he said.

Also adopted as an amendment to the Senate's appropriations bill was the Prison Litigation Reform Act, which includes provisions affecting remedial relief in prison condition cases, as well as provisions af-




Senator Judd Gregg

fecting prisoner civil rights actions generally. (See story on page 3.)

Also of interest is a colloquy engaged in by Senators Orrin Hatch (R-UT), Phil Gramm (R-TX), and Grassley that indicates that no FY 96 funds are to be provided for gender bias studies.

"These studies have been ill-conceived, deeply flawed, and divisive," Hatch said. "In my view, they threaten the independence of the federal Judiciary."

During the floor debate on the appropriations bill, Senator Phil Gramm (R-TX) announced that he is relinquishing his seat as chair of the Subcommittee on Commerce, Justice, State and the Judiciary to take a position on the Finance Committee. Gramm will not chair the upcoming House-Senate conference on the Judiciary's FY 96 appropriations measure. Senator Judd Gregg (R-NH) is expected to take over Gramm's role as chair of the subcommittee.

It is expected that a House-Senate conference on the appropriations bill will begin sometime this month. 

Senate Appropriations Bill Contains Prison Reforms

During consideration of the Commerce, Justice, State and Judiciary appropriations bill (H.R. 2076), Senator Orrin Hatch (R-UT) offered the Prison Litigation Reform Act of 1995 as a substitute amendment for the Stop Turning Out Prisoners Act (STOP act) already included within that bill. The substitute not only revised and expanded the provisions of the STOP Act, but also added provisions affecting prisoner civil rights litigation in general, some of which were similar to those passed by the House in H.R. 667 and those pending in the Senate as S. 866. Hatch's substitute amendment was agreed to and was included in the appropriations bill as passed by the Senate last month.

The House-passed appropriations bill does not contain prisoner litigation amendments.

The following is an overview of the prisoner provisions in the Senate appropriations bill. The provisions that affect prisoner civil rights actions would, among other things:

- require state prisoners to exhaust available administrative remedies before initiating a civil rights action;
- require generally prisoners proceeding in forma pauperis to pay the full filing fee for civil actions and appeals, payable through installments;
- require a court to dismiss any prison conditions action if the court is satisfied that the action is either frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief;
- require that pretrial proceedings in which the prisoner's participation is required or permitted be conducted by telephone or video conference without removing the prisoner from the facility, to the ex-

tent practicable; and

- require the court to review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner sues a governmental entity or its officer or employee.

The amendments affecting remedial relief in prison conditions cases include provisions that would do the following:

- Limit prospective relief in prison condition cases to that necessary to correct the violation of a federal right of a particular plaintiff or plaintiffs.
- Prohibit the court from granting or approving prospective relief or consent decrees unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least obtrusive means necessary to correct the violation.

- Require that in any civil action in federal court with respect to prison conditions a prisoner release order shall be entered only by a 3-judge court.

- Provide that for prospective relief ordered in any prison condition case, the relief is "terminable" upon the motion of any party two years after the court granted relief.

- Allow the court to appoint a "disinterested and objective special master" to conduct hearings on the record and prepare proposed findings of fact.

- Require the compensation, which would be capped, and costs of all special masters appointed in conjunction with prison condition cases to be paid with "funds appropriated to the federal Judiciary." Special masters would no longer be required to be magistrate judges as originally provided in the STOP act.

Congress to Review Judgeship Needs

For what is believed to be the first time in recent history, Congress is conducting a hearing on whether there is sufficient workload to justify filling certain judicial vacancies.

Senator Charles Grassley (R-IA), chair of the Judiciary Subcommittee on Administrative Oversight and the Courts has scheduled a hearing this month on the topic, "Conserving Judicial Resources: The Caseload of the U.S. Court of Appeals for the District of Columbia Circuit and the Appropriate Allocation of Judgeships." Grassley has indicated that he is studying the relationship between caseload and the

allocation of circuit and district court judgeships from 1983 to the present. As part of his review, Grassley is accumulating caseload and judgeship data on each court of appeals and district court.

The U.S. Court of Appeals for the District of Columbia Circuit, the apparent focus of the October 17 hearing, has 12 authorized judgeships. There is one vacancy, which was created in September 1994 when Chief Judge Abner J. Mikva retired to become White House Counsel. Principal Associate Deputy Attorney General Merrick B. Garland was nominated last month to fill the vacancy.

Conference continued from page 1
its Defender Services Committee. The committee found that Post Conviction Defender Organizations (PCDOs) are a cost-effective, efficient means of providing representation in death penalty cases. The committee reached its conclusion based on interviews and data it obtained from federal and state judges, state attorneys general, resource center directors and staff, traditional federal defenders, state bar representatives, and private attorneys. Nevertheless, in FY 96, Congress is expected to eliminate the funding for the existing 20 PCDOs, but may allow for a 6-month phase-out.

- Amended its September 1993 proposal for the creation of 19 new bankruptcy judgeships to instead transmit a request to Congress to create 11 new bankruptcy judgeships as follows: one judgeship each in the Eastern District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Pennsylvania, the Eastern District of Michigan, the Southern District of Florida, and the District of Maryland; and four bankruptcy judgeships in the Central District of California. This amendment was adopted because of a reduction in bankruptcy filings in certain districts.

- Unanimously voted to defer any review of the issue of whether cameras should be permitted in the courts of appeals until the next regularly scheduled session of the Conference in March 1996.

- Adopted a policy that all federal courts provide reasonable accommodations to persons with communications disabilities. The Conference also voted to require courts to provide, at Judiciary expense, sign language interpreters or other appropriate or auxiliary aids to deaf and hearing-impaired participants in federal court proceedings in accordance with guidelines

prepared by the Administrative Office. This policy does not apply to spectators or to jurors whose qualifications for service are determined under other provisions of law.


- Disapproved a proposed amendment to Rule 16 of the Federal Rules of Criminal Procedure. The proposed rule change would have required the government, seven days before trial, to disclose to the defense the names of government witnesses unless it believes in good faith that pretrial disclosure of this information might threaten the safety of a person or risk the obstruction of justice.

- Approved the proposed new Consolidated Code of Conduct for Judicial Employees and repealed the existing Codes of Conduct for Clerks, Probation and Pretrial Services Officers, Circuit Executives, Staff Attorneys, and Law Clerks, effective January 1, 1996.

- Recommended that the name of Judge A. David Mazzone (D. Mass.) be presented to the President for reappointment to the U.S. Sentencing Commission, subject to the advice and consent of the Senate.

The Conference also agreed to forward to the President the names of Judges Diana E. Murphy (8th Cir.), Donald E. O'Brien (N.D. Iowa), and William B. Enright (S.D. Cal.) for the appointment of one of them to the commission succeeding Judge Julie Carnes (N.D. Ga.), who does not seek reappointment. Two vacancies on the commission will occur on October 31, 1995.

- Approved a resolution in memory of the late Chief Justice Warren E. Burger. In part, the resolution states, "His [Burger's] reputation as a jurist, a scholar, and an esteemed colleague will be forever a part of the history of this Conference and a grateful nation."

- Approved a resolution in recognition of the tenth anniversary of L. Ralph Mecham, Director of the Administrative Office. It states, in part, "Director Mecham's distinguished leadership has served to reshape and strengthen the Administrative Office of the U.S. Courts to meet current and anticipated challenges." 

Conference Acts on Long Range Plan

On September 19, 1995, the Judicial Conference completed review of the *Proposed Long Range Plan for the Federal Courts* submitted to the Conference by its Committee on Long Range Planning at the March 1995 session. The following describes the actions taken as a result of that review.

- Approved without change Recommendations 8, 13, 17, 18, 20, 22, 24, 28 (including Implementation Strategies 28a & 28b), 33, 42 (including Implementation Strategies 42a & 42b), 49 (including Implementation Strategies 49a &

49b), 52 (including Implementation Strategies 52a(2)-(3), 52b(1)-(4), 52c(2)), and 90.

- Approved Recommendation 4 (including Implementation Strategies 4a-4c), 10, 12 (including Implementation Strategies 12a-12c), 14, 23, 25, 27, 65, 66, 67, 68, 89, 92 (including Implementation Strategies 92a-92g), and 96, and Implementation Strategy 94d, with the revisions proposed by the reviewing committees.

- Approved Recommendation 7 (limiting diversity jurisdiction) in the revised form proposed by the re-

See *Plan* on page 6

Key Legislation Moves in Both Houses of Congress

Several bills currently pending in the House and Senate are of particular interest to the courts. They include the following:

■ **H.R. 2361**, a bill amending the Judicial Improvements Act of 1990 (P.L. 101-650), was introduced by Representative Carlos A. Moorhead (R-CA) in September. It would provide that the first U.S. district court vacancy occurring five years after the *confirmation date* of a judge named to fill a temporary judgeship would not be filled. This would amend the current law, which states that the first vacancy occurring five years after *enactment* of the 1990 legislation would not be filled. The U.S. District Court for the Western District of Michigan is specifically exempted. H.R. 2361 is likely to be considered by the House Judiciary Committee this month and soon after by the full House and the Senate.

■ **H.R. 2259**, a bill to disapprove the proposed U.S. Sentencing Commission amendments equalizing crack and cocaine powder quantities in sentencing, as well as the money laundering amendments, was introduced in the House by Representative Bill McCollum (R-FL). Currently it takes 100 times as much powder cocaine as crack cocaine to trigger the mandatory penalties. The House bill, which retains the firearms enhancement provisions of the commission's proposed amendments, was marked up and reported out by the House Judiciary Committee.

■ **S. 1254**, a bill introduced by Senator Spencer Abraham (R-MI) relating to the U.S. Sentencing Commission proposed amendments, was passed the Senate. The Senate will not only disapproves the cocaine equalization amendments but also proposed money laundering amendments and the firearms enhance-



(L to R) Judge Diarmuid F. O'Scannlain (9th Cir.), Chief Judge J. Clifford Wallace (9th Cir.), and Chief Judge Gerald B. Tjoflat (11th Cir.) testify before Congress on the proposed split of the Ninth Circuit.

ments. An amendment with the same provisions as S. 1254 was attached to H.R. 2076, the Judiciary's FY 96 appropriations bill, which has passed the Senate. Amendments to the sentencing guidelines typically are sent to Congress and take effect November 1, unless Congress rejects them.

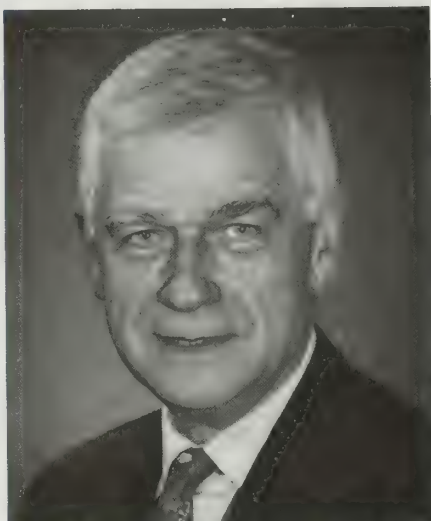
■ **H.R. 1170**, a bill to require three-judge panels to consider applications for interlocutory or permanent injunctions restraining the enforcement, operation, or execution of state laws adopted by referendum on the ground of unconstitutionality, was introduced by Representative Sonny Bono (R-CA).

The bill also would require these three-judge panels to expedite consideration of the action, and would provide for direct appeal to the Supreme Court. Prior to the introduction of this legislation, a federal judge had enjoined California Proposition 187 (restricting certain benefits to illegal immigrants) from taking effect, pending a challenge to its constitutionality. The House passed H.R. 1170 last month, after an attempt by Representative

Patricia Schroeder (D-CO) to limit the scope of the bill failed. If enacted, the bill would apply to any application for an injunction that is filed on or after the date of enactment. There is no companion bill in the Senate.

■ **S. 956**, a bill to divide the ninth judicial circuit of the United States into two circuits, was introduced by Senator Slade Gorton (R-WA) with co-sponsors from all the states forming the proposed new circuit. The Twelfth Circuit would be composed of Alaska, Idaho, Montana, Oregon, and Washington. The Ninth Circuit would be composed of Arizona, California, Hawaii, Nevada, Guam, and the Northern Mariana Islands. The Senate Judiciary Committee held a hearing on the bill last month. Chief Judge J. Clifford Wallace (9th Cir.), Chief Judge Gerald B. Tjoflat (11th Cir.) and Judge Diarmuid O'Scannlain (9th Cir.) testified. There is no companion bill pending in the House.

Hatfield and Smith Recognized for Contributions to Judiciary



Senator Mark O. Hatfield

The Judicial Conference passed resolutions in appreciation of one former and one current member of Congress at its September meeting.

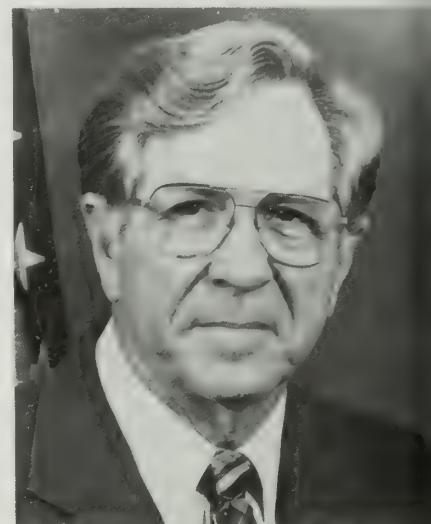
Senator Mark O. Hatfield (R-OR), chairman of the Senate Appropriations Committee and a member of the Subcommittee on Commerce, Justice, State and the Judiciary since

1975, was recognized as "a true friend of the Judiciary." In part, the resolution stated, "He [Hatfield] has zealously displayed his steadfast faith in the judicial process. His diligence and exceptional leadership have earned him the respect and admiration of all with whom he has served."

Former Iowa Representative Neal Smith, was honored for this work as chairman of the Appropriations Subcommittee on Commerce, Justice, State and the Judiciary and as a "longtime friend and ardent supporter of the federal Judiciary." The resolution cited Smith's commitment to justice. "Neal Smith has been a true advocate on behalf of the needs of the Federal Judiciary. At a time of a tremendous expansion in the jurisdiction and workload of the third branch, Neal Smith made sure that the federal Judiciary received the funding necessary to accomplish its mission. His staunch support en-

abled the courts not only to keep abreast of their burgeoning caseloads, but also to modernize operations, increasing efficiency and thereby providing improved service to the public."

Smith was defeated in his reelection bid last year.



Former Representative Neal Smith

Plan continued from page 4

viewing committee but with the specific direction that the commentary on that recommendation acknowledge the Conference's long-standing position favoring complete abolition of diversity jurisdiction.

- Approved Implementation Strategy 39c (use of nonjudicial staff and adjunct judicial officers by the courts of appeals) in a revised form that includes revisions proposed by the reviewing committee: "Appellate courts should consider the use of nonjudicial staff and adjunct judicial officers to handle certain routine matters that do not involve the appellate review function reserved to Article III judges."

- Approved Recommendation 44 in the revised form proposed by the

reviewing committee, including language contained in the proposed Implementation Strategy 44a but not the proposed Implementation Strategy 44b (Conference authority to issue administrative orders).

- Approved Recommendation 48, which deals with the institutional status and respective missions of the Administrative Office and Federal Judicial Center as amended, to include the statement, "The officially adopted policies of the Judicial Conference represent the view of the judicial branch on all matters and should be respected as such by the Administrative Office and the Federal Judicial Center when dealing with members of Congress or the executive branch."

- Approved Implementation

Strategy 52c(5) (bankruptcy judge and magistrate judge participation in local governance) in a revised form: "[I]ndividual district courts should take appropriate steps to involve bankruptcy judges and magistrate judges in local governance."

- Deleted Recommendations 15, 29, 70 (including Implementation Strategies 70a-70c), 72, 73, 74, and 75 and Implementation Strategies 45c, 52a(1), 52c(1), 52c(3), and 52c(4).

- Rescinded the Conference's earlier approval of Recommendations 6 and 71.

- Approved a new Recommendation 69 (including Implementation Strategies 69a-69d that include substance drawn from the former Recommendations 69 and 71 and deleted Recommendations 70, 74, and 75).

OCTOBER

- 23-27 Monday-Friday**
Video Orientation for Newly Appointed District Judges
- 23-27 Monday-Friday**
Orientation for Newly Appointed Magistrate Judges

NOVEMBER

- 9-11 Thursday-Saturday**
Advisory Committee on Civil Rules
- 13-17 Monday-Friday**
Orientation for Newly Appointed District Judges
- 28-29 Tuesday-Wednesday**
Committee on International Judicial Relations
- 30-December 1 Thursday-Friday**
Committee on Criminal Law

MAGISTRATE JUDGE, Southern District of New York

Applications are being accepted for the position of full-time Magistrate Judge at New York, New York. To be qualified for appointment, an applicant must (a) be a member in good standing of the bar of the highest court of a state, the District of Columbia, and Commonwealth of Puerto Rico, or the U.S. Virgin Islands for at least five years; (b) have been engaged in the active practical of law for a period of at least five years; (c) be less than 70 years old; and (d) not be related to a judge of the district court. Salary: \$122,912 per annum. Candidates should submit applications to Clifford P. Kirsch, District Court Executive, U.S. Courthouse, Room 820, 500 Pearl Street, New York, NY 10007-1312. An original plus 12 copies of a cover letter, resume, and application must be received by **November 17, 1995**.

CLERK OF COURT, U.S. Court of Appeals for the First Circuit

The Clerk of Court oversees all administrative operations of the clerk's office, including case records management, budgeting, financial planning, statistical reporting, personnel management, automation, and opinion publication. The court has a complement of six active judges and currently has four senior judges. Applicants must have ten years of progressively responsible administrative or legal experience, including at least five years in a position of substantial management responsibility. A degree in law is required. Applicants must have strong knowledge of automated systems and possess strong analytical, communication, and interpersonal skills. Salary range: \$97,894 - \$115,742. To apply, send resume to Vincent Flanagan, Office of the Circuit Executive, 1425 J.W. McCormack Post Office and Courthouse, Boston, MA 02109. Closing date is **October 31, 1995**.

CLERK OF COURT, District of Maryland

The Clerk's Office is headquartered in Baltimore with a divisional office in Greenbelt. Applicants must have an undergraduate degree and a minimum of 10 years of management experience of increasing responsibility in the private sector. Substantial experience in personnel and budget management is required. Experience in federal judicial administration is desirable but not mandatory. Salary: \$96,530 - \$114,129. An original and four copies of a resume and cover letter must be submitted to Clerk of Court Search Committee, c/o Betsy Michael, U.S. District Court for the District of Maryland, Room 441, 101 West Lombard Street, Baltimore, MD 21201. Applications must be received no later than **January 3, 1996**.

DISTRICT COURT EXECUTIVE, Eastern District of New York

This metropolitan court seeks an experienced administrator for the position of District Court Executive, the chief administrative officer of the court. The appointee is responsible for administrative management of non-judicial functions of the court and its component offices. Executive ability and senior management experience essential. Advance training in law, business, architecture or public administration desirable. Starting salary is \$98,196-116,099, depending on education and experience. Submit cover letter and resume by **November 6, 1995** to Steven Flanders, Circuit Executive, United States Courts for the Second Circuit, 2904 U.S. Courthouse, New York, NY 10007.

CHIEF PRETRIAL SERVICES OFFICER, Central District of California

Applications are being accepted for the Chief Pretrial Services Officer in the Central District of California. Salary: \$52,490-\$116,196, commensurate with experience. Send resume or SF-171 to Office of the Executive Officer, U.S. District Court, 312 North Spring Street, Second Floor, Los Angeles, CA 90012. For an employment application call (213) 894-3220. The position will be available in December 1995. **Open until filled**.

EQUAL OPPORTUNITY EMPLOYERS

Judicial Conference Reception Honors Appropriations Chairs



(L to R) Judge Clarence A. Brimmer (D. Wyo.) and Judge Charles L. Briant Jr. (S.D. N.Y.) shared conversation.



(L to R) Steve Nousen, administrative assistant to Senator Mark O. Hatfield, accepted a framed copy of the Judicial Conference resolution on behalf of Hatfield, who was ill and unable to attend the event.



(L to R) Chief Judge Gerald B. Tjoflat (11th Cir.) and Judge D. Lowell Jensen (N.D. Calif.) attended the reception.



(L to R) Former Representative Neal Smith (D-IA) displayed the resolution presented by Chief Judge Gilbert S. Merritt (6th Cir.) on behalf of the Judicial Conference.

JUDICIAL MILESTONES

Appointed: Nancy F. Atlas, as U.S. District Judge, U.S. District Court for the Southern District of Texas, August 22.

Appointed: Wiley Y. Daniel, as U.S. District Judge, U.S. District Court for the District of Colorado, September 1.

Appointed: George H. King, as U.S. District Judge, U.S. District Court for the Central District of California, July 3.

Appointed: Joseph H. McKinley Jr., as U.S. District Judge, U.S. District Court for the Western District of Kentucky, August 25.

Appointed: Donald C. Pogue, as Judge, U.S. Court of International Trade, August 25.

Appointed: Ortrie D. Smith, as U.S. District Judge, U.S. District Court for the Western District of Missouri, August 17.

Appointed: B. Lynn Winmill, as U.S. District Judge, U.S. District Court for the District of Idaho, August 16.

Elevated: Chief Judge Terence T. Evans, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Seventh Circuit, September 1.

Senior Status: Judge Charles S. Haight Jr., U.S. District Court for the Southern District of New York, September 23.

Retired: Magistrate Judge William H. Barry Jr., U.S. District Court of the District of New Hampshire, August 31.

Retired: Senior Judge Jim R. Carrigan, U.S. District Court for the District of Colorado, August 19.

Retired: Magistrate Judge George L. Gucker, U.S. District Court for the District of Alaska, August 31.

THE THIRD BRANCH

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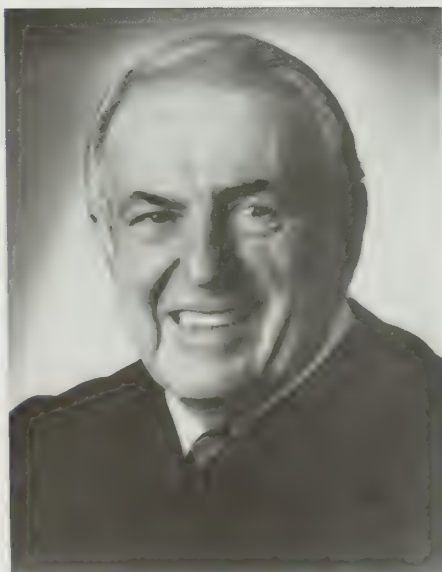
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Mikva Resigns From White House Post



Abner J. Mikva

Former U.S. Court of Appeals Judge Abner J. Mikva retires as White House counsel on November 1, 1995.

In making the announcement, President Clinton said, "Although I am saddened by his departure, I am grateful that he was willing to come forward and serve his country." The President praised Mikva's "special combination of legal acumen, wise judgment and uncompromising integrity." Mikva was appointed White House counsel on October 1, 1994. He previously sat on the U.S. Court of Appeals for the D.C. Circuit, serving as the court's chief judge from 1991-1994.

JUDICIAL BOXSCORE

As of October 1, 1995

Courts of Appeals	
Vacancies	11
Nominees	5
District Courts	
Vacancies	46
Nominees	16
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	16

Electronic Public Access to Court Information Surveyed

Law firms were the most common users and bankruptcy court information was the most frequently accessed, according to a survey of registered users of the federal Judiciary's Electronic Public Access (EPA) services.

EPA, now in its sixth year, offers public off-site access to official federal court information and records in many courts. Currently, these services include the Appellate Electronic Board System (ABBS), with electronic access to appellate court decisions and other court information such as court oral argument calendars, case dockets, local court rules, notices and reports, and press releases; and Public Access to Court Electronic Records (PACER).

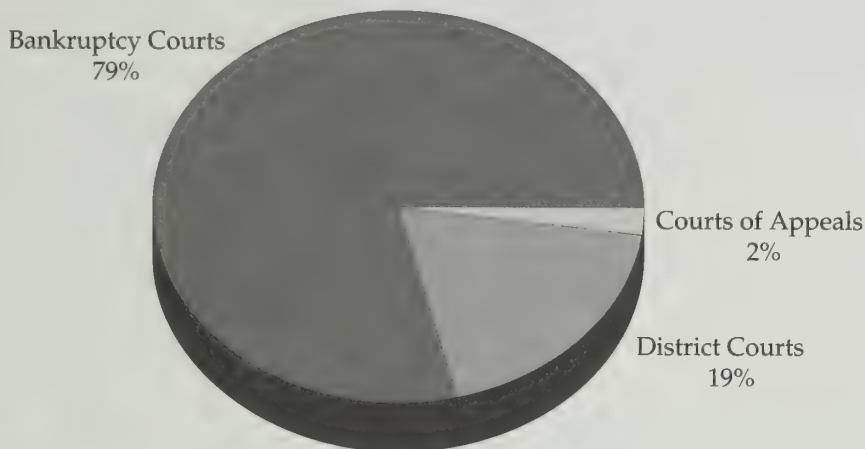
PACER allows any user with a personal computer or word processor to dial-in to a district or bankruptcy court computer and retrieve official electronic case information and court dockets. User fees are charged for EPA services and each court controls its own computer system and the information database.

The PACER Service Center in San Antonio, Texas, and the Administrative Office recently conducted the first national mail survey of 2,500 of 25,000 organizations registered for EPA. Over 1,300 EPA users responded.

According to the survey, law firms represent 72 percent of the organizations presently registered for PACER or ABBS service, with 34 percent from law firms having over 25 employees and the remaining 38 percent in law firms with fewer than 25 employees. Another 20 percent of respondents were commercial and business organizations; 4 percent were federal and state government agencies; and 2 percent were media and legal publishers.

Approximately 40 percent of all registered organizations accessed

Public Use of PACER Services in 1995



PACER or ABBS sometime this year. Most were looking for bankruptcy court information. District court records were next in popularity, followed by appellate courts. The majority of users, 55 percent, stayed fairly close to home, accessing court records from a single district or metropolitan area, while 33 percent were looking for case records from several jurisdictions, an entire region, or on a national basis. Only 20 percent of the users regularly required technical assistance or support services from either national or local court support services.

User satisfaction was high with 70 to 80 percent of those surveyed indicating they were "very satisfied" or "satisfied" with most aspects of service, including ease of use and the type and quality of information provided. Approximately 80 percent of PACER customers gave the Judiciary a good to excellent rating for overall information services. When compared to other government information services, only 3 percent evaluated PACER services as below average or worse, and only 13 percent gave PACER an average rating.

Value for the cost received a 71

percent approval rating. This response was before the Judicial Conference approved a reduction in fee from \$1 to \$.75 per connect minute, effective April 1, 1995.

The users surveyed also had suggestions for PACER enhancements or new EPA services. Additional case information was suggested by 67 percent, while 61 percent wanted to see all bankruptcy case docket entries, and 52 percent would like to see bankruptcy schedules. Over half, 51 percent, would like the federal courts to electronically transmit or fax court documents to interested parties. Other items receiving significant interest were access to archived case information (46 percent), court calendars (45 percent), national or statewide indexes (44 percent), electronic filing of documents (43 percent), removal of 12-18 hour information delay (43 percent), national database (42 percent), and a list of closed and discharged bankruptcy cases (41 percent). Internet access was of interest to only 25 percent.

Judge J. Owen Forrester: Leading the Judiciary's Automation Efforts

Judge J. Owen Forrester was appointed to the U.S. District Court for the Northern District of Georgia in 1981. He completed his first year as chairman of the Committee on Automation and Technology earlier this month.

Q: What do you see as major advances in the Judiciary's automation effort?

A: The first major advance was the creation of an electronic docket system to provide useful case management reports for judges.

The next major advance was bringing automation into chambers. We tend to forget the typewriter days, but when they are recalled, it is easy to see the increases in productivity for judges' secretaries and law clerks. Computer-assisted legal research (CALR) also has been very helpful.

When it is fully operational, the Data Communications Network (DCN) will be the next great advance. It is the essential backbone for greatly improving systems both in the administrative area and in the judging area. It has often been sold as a giant e-mail network, but that is probably the least important thing it will do for the Judiciary. The principal benefits are the sharing and transmission of administrative and legal information. The DCN will also save millions of dollars in telephone charges for CALR access.

Q: How would you characterize the challenges today, both for your committee and automation Judiciary-wide?

A: The greatest challenge is taking advantage of emerging

technology in a time when money is becoming very scarce. DCN hardware and software and our installed PC base move toward obsolescence in a matter of a few years, and they must be upgraded. At the same time, all of the software that supports the administrative functions of the court is either an unsatisfactory patchwork of various systems or else it is fragile and extremely outdated.

Q: And challenges for the near future?

will help us pay CJA lawyers in a more fiscally responsible way and give courts a new jury system.

Q: "Paperless court" and "electronic courtroom" are terms increasingly used to describe the court of the future. Do you think there is a place for them in the federal court system?

A: The legal culture changes and adapts very slowly. It is my hope that in four to five years we will be able to redirect some of

"Automation is the greatest thing since paper and pen to give a legal decision-maker control over the information that shapes decisions."

A: I would say in the next three years, most of our discretionary money not allocated to completing the DCN will be spent on programs that make us better stewards of our resources. The committee has given high priority to a number of systems that will enable court managers to better manage resources, money, property, and personnel. These systems include a modern, unified financial system. Next year we hope to begin installation of a new payroll and personnel system.

During the next 18 months we hope to acquire and begin the installation of an integrated library system that controls both the fiscal aspect of administering the library program, and gives us a better understanding of what we have and where it is located. We have other projects on the drawing board that

our revenue stream toward the paperless court and the electronic courtroom. By that time, I believe the Judiciary and attorneys will be comfortable with the technology.

There are several courts conducting volunteer experiments with electronic filing, with varying degrees of success. We have begun such a project in the District of New Mexico with the state bar and the state courts. The idea is that in a year or so, all the papers will be received, stored, and retrieved electronically. There are a number of technical and social issues that have to be ironed out before we feel comfortable with that, but I think the biggest single hurdle is the current level of the automation skills of lawyers and judges. When we solve these problems we will be ready for a new docketing and records management system that will allow

members and, perhaps, the public have on-line access to the contents of the case files.

The electronic courtroom seems closer to reality. The College of William and Mary has had a state-of-the-art computer enhanced courtroom for several years. Those who have seen it immediately grasp what technology can add to the search for truth, and to the speed at which trials could be conducted. Most larger law firms are now equipped to utilize the technology, as is the Department of Justice. The Committee on Security, Space and Facilities is already looking at whether courtrooms that are presently in the design state should take into account the likelihood that this technology is available. The AO's Office of Automation and Technology is beginning to develop some standards and guidance on what kind of equipment ought to be considered.

Q: As you complete your first year as chair of the Committee on Automation and Technology, what initiatives have you articulated and how would you see them played out during the next two years?

A: I've already outlined our immediate initiatives. There are other things in the works. Director Mecham asked the committee to give him advice on a software acquisition strategy for the AO. Based on the decisions he has made after receiving our advice, I expect that we will emphasize purchasing commercial off-the-shelf products, and when appropriate, encourage locally developed automation products. At the same time, the Office of Automation and Technology has become very skilled at new development projects, which will enable them to build products that we cannot buy that are not feasible for local development. We will also be working on ways

to extend the coverage of the DCN with the least money, and I am expecting that the chambers umbrella group will begin to focus on new automation projects that will give judges and their law clerks better control over factual and legal information. Also, we are beginning to



Judge J. Owen Forrester

look at a national, integrated probation/pretrial information system.

Q: You were instrumental in setting up the judges office automation training program, which has been very popular. Are you surprised by the high number of judges attending this course? What are your thoughts in general about the level of training that judges should have in automation?


A: In my view, this training in the San Antonio Center is probably our most successful automation project. They teach judges everything from where the on/off switch is to how to use a PC to do a judge's work, such as writing a letter, editing an opinion, and using computer-assisted legal research. The judges are exposed to the possibilities of setting up a database of their own opinions. And, a little time is spent with some of the tech-

nical operating system issues.

The biggest problem we have now is finding a means to encourage judges to use what they have learned. It is easy to learn something, then come back to the pressures of being a judge and postpone actual use. But even those who don't put it into practice are better prepared to be managers in the courts and chambers and have some appreciation of what automation can do for them.

Now, for the first time, we're beginning to see requests for advanced training.

Q: You have touched on this in earlier questions, but, in general, how do you think emerging technologies will affect the Judiciary and the work of the courts?

A: Automation is the greatest thing since paper and pen to give a legal decision-maker control over the information that shapes decisions. For some time now, we have had that power over our legal database with the services provided by Westlaw and LEXIS. As we moved toward storing our records electronically, judges and law clerks will be given the same power over the information contained in the factual record. Automation will also allow a better and quicker presentation of evidence in trials. In the long run, this could have a substantial impact on how we actually conduct a trial. If all the evidence has been collected and ruled on in advance of trial, do we really need lawyers and judges sitting with a jury every minute? This is the sort of longer term implication that automation could have for the legal system. In the intermediate term, I believe that we will see a great deal more communications occurring through teleconferencing. Whether it is between lawyers and judges, or between administrators, or teacher and pupil. 

Judge Frank Johnson Honored With Presidential Medal of Freedom

A federal judge who ruled unconstitutional the law segregating Montgomery, Alabama, bus passengers was awarded the Presidential Medal of Freedom, the country's highest civilian award, at White House ceremonies last month. Judge Frank M. Johnson, Jr. (11th Cir.) sat in the U.S. District Court for the Middle District of Alabama when he made his historic ruling in 1956. He was honored for that decision and for his work over four decades "to dismantle segregation and to protect the rights of the imprisoned and the mentally ill." In making the presentation, President Clinton said, "During 40 years on the bench, Judge Johnson made it his mission to see to it justice was done within the framework of law. In the face of unremitting social and political pressure to uphold the traditions of oppression



Judge Frank M. Johnson, Jr.

and neglect in his native South, never once did he yield. His landmark decisions in the areas of desegregation, voting rights and civil liberties transformed our understanding of the Constitution." The

medal was received by Johnson's former law clerk, John Sandage because Johnson was unable to travel.

In all, twelve outstanding Americans were recognized for lifetimes of work championing causes that ranged from children's television to urban design. A. Leon Higginbotham, Jr., formerly of the U.S. Court of Appeals for the Third Circuit, also was honored for his work to "advance the needs of those who have long been denied access to the American Dream."

Members of the Judiciary were last honored with the Presidential Medal of Freedom in 1993 when Justice Thurgood Marshall (Sup. Ct.), Justice William Brennan (Sup. Ct.), and Judge John Minor Wisdom (5th Cir.) received medals.

THE THIRD BRANCH

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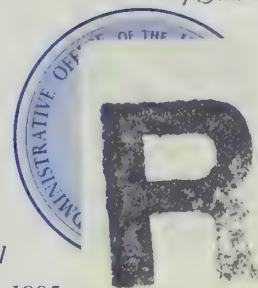
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THE THIRD BRANCH

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November 1995



Senator Orrin Hatch Looks at Courts, Legislation, and Judicial Nominees

Senator Orrin G. Hatch (R-UT) has been a member of the U.S. Senate since 1977. In the 103d Congress he became the ranking minority member on the Judiciary Committee, taking over the committee chair in the 104th Congress.

Q: What is your view of the quality of judicial nominees your committee has processed this Congress? What has been the practice for determining who gets a hearing and what are the prospects

for judicial nominees as we approach 1996?

A: I believe that the Judiciary Committee has processed many worthy nominees during this Congress. The administration has worked to consult with me on many nominees. The White House and Justice Department officials in charge of judicial selection communicate with me and with my staff on a regular basis. I trust that this effective working relationship will continue.

In general, we schedule nominees for hearings as soon as their background and legal checks are completed. As a result, I have moved nominees at an equitable pace.

Q: Since workload questions have been raised by Senator Charles E. Grassley (R-IA) and others in connection with filling an existing vacancy on the D.C. Circuit Court of Appeals, is it your sense that the committee will now apply a similar test to all judgeships?

A: The workload issue is an important one. Senator Grassley is to be commended for raising important issues such as caseload and judicial resources in his hearings. We are examining the
See Interview on page 10

Conference of Supreme Courts of the Americas Convenes in Washington



Last month the Conference of Supreme Courts of the Americas met in Washington, D.C. Chief Justice William H. Rehnquist addressed participants at the opening ceremony at the Supreme Court. See page 4 for details.

INSIDE

Conference Supports Court Improvements Bill 2
Judiciary Initiates Space and Facilities Review 6
Senate Reviews Allocation of Judgeships 7

Conference Testifies in Support of Courts Improvement Legislation



(L to R) Judges Stephen H. Anderson (10th Cir.), Barefoot Sanders (N.D. Tex.), and Gustave Diamond (W.D. Pa.) discussed the Federal Courts Improvement Act prior to testifying at the Senate hearing.

Representatives of the Judicial Conference asked a Senate subcommittee last month to support an omnibus bill containing numerous improvements in the operation and administration of the federal courts.

S. 1101, the Federal Courts Improvement Act, contains more than 50 different provisions, which have been endorsed by the Judicial Conference. Many also were recommended by the Federal Courts Study Committee, a three-branch committee that five years ago issued a study of the federal court system. A similar bill, H.R. 1989, is pending in the House.

Testifying at the Senate Judiciary Subcommittee on Administrative Oversight and the Courts hearing were three judges who chair Judicial Conference committees that have reviewed the various provisions in the legislation: Judge Barefoot Sanders (N.D. Tex.), chair of the Committee on the Judicial Branch; Judge Stephen H. Anderson (10th Cir.), chair of the Committee on Federal-State Jurisdiction; and Judge Gustave Diamond (W.D. Pa.), former chair of the Committee on Defender Services.

"The Judicial Conference believes that each of the 53 sections of S. 1101 contains a proposed amendment to law which, if enacted, will improve the organization, management, and operation of the federal Judiciary," Sanders said.

Among the provisions contained in S. 1101 are those that would accomplish the following:

- Correct a long-standing anomaly in the jurisdiction of the federal courts by eliminating the right of in-state plaintiffs (ISP) to invoke diversity jurisdiction. ISP diversity jurisdiction allows a plaintiff to litigate in federal court a civil claim based on state law, even though the plaintiff is a citizen of the state whose court system the plaintiff seeks to avoid. The reasons that existed in 1789 for granting federal court jurisdiction over ISP cases no longer exist. Currently, about 31 percent of all new diversity filings—5,318—are by in-state plaintiffs. Repeal of ISP diversity jurisdiction would remove many of these cases from federal court and assist the federal courts in meeting the needs of contemporary plaintiffs who seek judicial enforcement of the rights

conferred on them by federal law and ensure that scarce judicial resources are used wisely.

- Raise the jurisdictional amount in controversy in diversity jurisdiction cases from \$50,000 to \$75,000. This amendment also would index this amount for inflation (based on the Consumer Price Index), and would be adjusted at the end of each year that is evenly divisible by five. The jurisdictional amount was last increased in 1986, when it went from \$10,000 to \$50,000.

- Provide for trial of a petty offense case by a magistrate judge without obtaining the defendant's consent or waiver of right to trial before an Article III judge. These cases often involve traffic violations or violations of regulations governing federal enclaves, such as national parks or military bases. The proposed amendment would enhance the efficiency of the courts and remove an opportunity for abuse of the system.

- Increase the filing fee for a civil action in the district courts from \$120 to \$150. The filing fee was last increased in 1986. This provision also would allow that the first \$90, rather than \$60, of each fee be deposited into a Judiciary fund to offset appropriated funds for the operation and maintenance of the courts.

- Mandate the establishment of federal defender organizations in every district where annually there are more than 200 appointments of outside counsel under the Criminal Justice Act (CJA). Federal defender offices provide a high quality of representation for indigent defendants in a cost-efficient manner. Currently, 63 federal defender organizations serve 73 of the 94 judicial districts.

- Authorize the Judicial Conference to set attorney compensation rates and case compensation

maximums under the CJA. The current panel attorney rates of \$40 per hour for out-of-court work and \$60 per hour for in-court work, which were set by Congress in 1984, prevail in most districts and are seriously inefficient. Inadequate compensation has hampered the courts in their ability to recruit and retain experienced attorneys to provide representation under the CJA. This amendment would allow the Conference to manage more efficiently the funds appropriated by Congress for Defender Services to meet the changing circumstances of federal criminal law and economics of law practice.

■ Amend the Jury Selection and Service Act of 1968 to eliminate an exemption from jury service for members of state or local fire or police departments and "public officers" of federal and state governments. Experience has shown that many individuals who fall within the scope of the exemptions could serve as other citizens do. In addition, the definition of "public officer" has been so broad that school board officials and clerks appointed by locally elected justices of the peace are forbidden to serve even if they wish to do so.

■ Repeal section 140 of P.L. 97-42, which would remove a provision enacted in a continuing appropriations resolution 15 years ago that bars all automatic cost-of-living adjustments for federal judges except as specifically authorized by Congress. This amendment would restore parity with the other two branches of government, as intended by the Federal Salary Cost-of-Living Adjustment Act of 1975 and the Ethics Reform Act of 1989.

■ Modify the age and service requirement for judicial retirement to address an inequity that exists for judges who are appointed before age 40. Under present law, life-tenured judges may not retire from regular active service or take senior status

until they reach age 65 with a minimum 15 years of service. The proposed amendment would permit a judge with 20 years of service who has reached age 60 to take senior status. The amendment would not change the requirements for a judge to retire from office.

■ Authorize a judge to provide sign language interpreters at court expense to participants in a judicial proceeding, subject to the availability of funds. This amendment promotes accommodation to the hearing impaired by vesting judges with the discretion to provide sign language interpreters at court expense.

■ Reauthorize appropriations for Fiscal Year 1996 and subsequent years to carry out the drug and alcohol aftercare program for federal offenders. This amendment would eliminate the necessity for repetitive enactment of bills to reauthorize this important program. The ability to

provide contract treatment services which include, at a minimum, urinalysis collection, and outpatient counseling has been an invaluable asset in enabling the system to respond to this growing problem.

■ Amend section 331 of title 28, United States Code, which states that the district judge representatives to the Judicial Conference shall be chosen by the circuit and district judges of the circuit at their annual circuit judicial conference. In 1990 the statute governing circuit judicial conferences was changed to permit them to meet biennially instead of annually. As a result, the terms of some district court representatives will expire in years when their circuit does not meet. This provision authorizes each circuit judicial conference to choose a representative in accordance with rules adopted by the circuit judicial conference.

See Legislation on page 12

Senator Heflin Addresses Judicial Pay

Senator Howell T. Heflin (D-AL) has introduced S. 1344, a bill to repeal the requirement relating to specific statutory authorization for increases in judicial salaries, to provide for automatic annual increases for judicial salaries.

Heflin said, "[I]t is my belief that Congress should take action to not only repeal section 140 [of P.L. 97-42] which currently bars cost-of-living adjustments in pay for federal judges, except as specifically authorized by Congress, but to also delink such adjustments from those of members of Congress and other executive schedule employees of the executive branch. . . . They make a lifetime commitment to public service as federal judges. They should be able to plan their financial fu-



Senator Howell T. Heflin

tures based on the reasonable expectation that their compensation will at least keep even with annual cost-of-living increases."

Organization of Supreme Courts of the Americas Holds Conference

The Conference of the Supreme Courts of the Americas concluded three days of meetings and discussions last month with a press conference at which Chief Judge Juan R. Torruella (1st Cir.), the U.S. delegate, announced the conference's unanimous decision to form the Organization of Supreme Courts of the Ameri-

global communication and faster international travel," said Rehnquist, "it is important for the legal communities and jurists of different nations in the western hemisphere, in particular, to exchange views, share information, and learn to better understand one another and our legal systems. This kind of coopera-

professor at St. John's University, headed a panel with Justice Antonin Scalia (Sup. Ct.) on "International Judicial Tribunals and Their Impact on National Courts." Conference proceedings will be published in Spanish and in English in an upcoming edition of the law review of the St. Louis University School of Law. Delegates also participated in a demonstration criminal trial. The final day of the conference was devoted to organizational issues and a vote at which delegates were unanimous in their approval of the formation of the Organization of Supreme Courts of the Americas.

The delegates now return to their home countries, where they will ask their national judiciaries to ratify their decisions by June 1996. Plans are to meet in 1997 in Panama, which is the designated Secretariat for the Organization, and whose president pro tempore is Dr. Hoyos. Panama, along with representatives from El Salvador, Colombia, Argentina, and the Supreme Courts of the Eastern Caribbean will form the planning committee for the 1997 meeting.

Instrumental in the conference's success were the planning committee members Dr. Hoyos; Dr. Raul J. Alonso de Marco, president of the Uruguay Supreme Court; Dr. Josefina Calcano de Temeltas, first vice-chief justice of the Venezuela Supreme Court; Chief Judges Torruella and Michael M. Mihm (C.D. Ill.), outgoing chair of the Judicial Conference Committee on International Judicial Relations; and Judge Cynthia Hall (9th Cir.), the committee's current chair. Also key to the conference was the assistance and support of the U.S. Department of State, the Agency for International Development as well as staff of the Administrative Office, the Federal Judicial Center, and the Supreme Court.



(L to R) Following the conference, Chief Judge Juan R. Torruella (1st Cir.) and Chief Judge Michael M. Mihm (C.D. Ill.) briefed the press in the atrium of the Thurgood Marshall Federal Judiciary Building. Seated is Dr. Arturo Hoyos, president of the Supreme Court of Panama.

cas. "The goal of the organization," said Torruella, "will be the promotion of judicial independence and the rule of law in this hemisphere. The organization would serve as a bond among the judicial systems of the Americas and promote international judicial cooperation." Members of the proposed organization would be drawn from the hemispheric countries that subscribe to the principles and objectives of the organization.

Delegates and representatives of 24 countries of the Americas participated in the conference. Opening ceremonies were held at the Supreme Court, where Chief Justice William H. Rehnquist, as the conference host, welcomed the jurists and introduced a theme repeated throughout the conference. "As national boundaries grow less significant in this age of

tion will provide important tools for the continuing development and improvement of our systems of law and justice."

The conference covered a wide-range of judicial topics. Justice Stephen G. Breyer (Sup. Ct.) was the speaker on a panel entitled, "Ensuring Judicial Independence," and Arturo Hoyos, president of the Supreme Court of Panama, presided at a program on "Due Process In the Americas." Ricardo Calvete Rangel, from the Supreme Court of Colombia, spoke on the "Organization of Justice in the Americas in the 21st Century," with a panel that included Justice Sandra Day O'Connor (Sup. Ct.). Justice Anthony M. Kennedy (Sup. Ct.) headed a panel on "Judicial Ethics," while former Chief Judge Edward D. Re (Ct. Int'l Trade), a

Senate Passes Bill to Amend Elapse Date of Temporary Judgeships

Late last month the Senate passed S. 1328, a bill amending the date on which certain temporary judgeships created under the Judicial Improvements Act of 1990 (P.L. 101-650) will expire. The bill, introduced by Senator Orrin Hatch (R-UT), provides that the first district judge vacancy occurring five years or more after the confirmation date of the judge appointed to fill the temporary judgeship would not be filled.

As the Senate began consideration of the bill, Hatch thanked the Administrative Office and "the fine federal judges, particularly Chief Judge Gilbert of the Southern District of Illinois, who called to my attention the need for this legislative change and the need for it to be passed before December 1, 1995." The House is expected to take up S. 1328 and the suspension calendar, where a two-thirds vote is needed for passage.

P.L. 101-650 created a new district judgeship in each of 13 districts, then specified that the first vacancy in the

Location of Temporary Judgeships Created under P.L. 101-650

Northern District of Alabama
Eastern District of California
District of Hawaii
Central District of Illinois
Southern District of Illinois
District of Kansas
Western District of Michigan
Eastern District of Missouri
District of Nebraska
Northern District of New York
Northern District of Ohio
Eastern District of Pennsylvania
Eastern District of Virginia

office of a district judge that occurred in those districts after December 1, 1995, would not be filled, effectively making the judgeships temporary positions while ensuring the judge filling the position serves in a permanent position. It was assumed that five years would give

the districts ample time to take full advantage of the temporary additional judgeships and to provide a period of time to determine if the judgeships should be made permanent.

However, as Hatch pointed out on the Senate floor, "[D]ue to delays in the nomination and confirmation of many of the judges filling those temporary judgeships, many districts have had only a relatively brief period of time in which to take advantage of their temporary judgeship." He cited the District Court for the District of Hawaii and the District Court for the Southern District of Illinois as examples of courts in which new judges were not confirmed until October 1994.

The only district excluded from the change implemented by S. 1328 is the Western District of Michigan, which requested to be excluded because its needs are met by the current number of permanent judgeships.

Judicial Clerkship Open Season Begins March 1

While there may appear to be a perennial open-season for job hunting, there is a definite opening to the season for law clerkship interviews with federal judicial officers. In 1993, in an effort to improve the law clerk hiring process, the Judicial Conference passed a resolution recommending that March 1 of the year before a clerkship begins be the benchmark starting date for law clerk interviews.

The Conference acted partly in response to letters from 69 law school deans expressing concerns with the early and irregular scheduling of clerkship interviews. The different dates meant students might make repeated and expensive trips to courthouses to comply with disparate interviewing schedules. The March 1 benchmark provides some order, while allowing schools to complete and send third semester grades. Law review selections also are usually known by this date.

Nominations Sought for Directors Award

Nominations for the 1996 Director's Awards for Administrative Excellence and Outstanding Leadership are now being accepted.

Nomination forms will be sent to all payroll certifying officers for distribution to employees. Nominations must be submitted to John J. Fitzgerald in the Administrative Office's Human Resources Division by **January 8, 1996**.

Judiciary Calls for Review of Courthouse Construction Practices

The federal Judiciary has called upon the General Services Administration (GSA), Congress, and others involved with federal construction to join the Judiciary in a review of federal courthouse construction practices.

"Tight funding, increased rental costs, and a branch-wide emphasis on economizing have led us to assume a leadership role in this important undertaking," said L. Ralph Mecham, director of the Administrative Office.

"The GSA plays the crucial role of overseeing the construction and rental of all federal buildings and its involvement in this undertaking is essential," said Mecham. "We also will solicit the views of Congress, which oversees the federal construction program and supplies the necessary funding for all courthouse construction projects."

As part of the review process, the Judiciary will contact every architect and engineer who has used the *U.S. Courts Design Guide* in building a courthouse. They will be asked to comment on portions of the *Guide* that work well, designs that have resulted in particularly efficient space utilization, and areas where further cost savings may be achieved.

The *Guide*, which has been in place for the past four years, periodically has been reviewed and amended by the Judicial Conference. In September the Conference approved a series of changes to the *Guide* in order to make courthouses more accessible to those with disabilities. The *Guide* was developed over a three-year period in a cooperative effort between the Judiciary, the GSA, and a team of experts in space planning, security, acoustics, mechanical-electrical systems, and automation, under the direction of the National Institute of Building Sciences and the Judiciary.

The review panel also will look at the method in which the GSA develops the rent for courthouses to assure that it reflects actual construction costs and market rates.

Judiciary rental payments to the GSA currently exceed \$500 million per year, representing about 20 percent of the Judiciary's budget. The review will look at whether these rates accurately reflect the economies that have been incorporated in courthouse construction and renovation in recent years.

In addition, the review will study whether court units have the right amount of space needed to do their jobs, while also achieving any possible economies. The analysis will incorporate any necessary security enhancements to address the types of threats that some courts have encountered and that became a reality in the Oklahoma City bombing.

The federal Judiciary, through the Judicial Conference and its Committee on Security, Space and Facilities, has been on the forefront of a widespread economizing effort within the Judicial Branch. In 1993, the

Conference approved amendments to the *Guide* that have saved \$1.5 million in the average courthouse. The Judiciary also is believed to be the first government entity to develop a comprehensive long-range space plan. At its September 1995 meeting, the Judicial Conference approved a five-year courthouse construction plan. Two years ago, the Conference established an Economy Subcommittee, which is charged with exploring ways to economize while continuing to provide a consistently high quality of justice.

"I am confident we can apply the many lessons and best practices learned from various building projects without delaying ongoing construction," Mecham said. "I believe this is a good opportunity for all those who have a hand in the courthouse construction process to join together so we can meet the courts' building needs in the most efficient and effective manner."

The Judiciary-led courthouse review process is expected to be completed within the next six months.

Hearings Scheduled on Courthouse Construction

As *The Third Branch* went to press, two hearings on courthouse construction were scheduled in the Senate. The December issue of *The Third Branch* will report on both hearings.

On November 2, the Committee on Environment and Public Works' Subcommittee on Transportation and Infrastructure, chaired by Senator John W. Warner (R-VA), held an oversight hearing on the General Services Administration's courthouse construction program. Judge

Robert E. Cowen (3d Cir.), chair of the Judicial Conference Committee on Security, Space and Facilities, and Administrative Office Director L. Ralph Mecham testified.

On November 8, the Committee on Governmental Affairs' Subcommittee on Oversight of Government Management and the District of Columbia, chaired by Senator William S. Cohen (R-ME), planned a hearing to examine federal courthouse construction programs. Cowen and Mecham were expected to testify.

NOVEMBER

28-29 Tuesday-Wednesday
Committee on International Judicial Relations

27-30 Tuesday-Wednesday
Video Orientation for Newly Appointed Bankruptcy Judges

30-December 1 Thursday-Friday
Committee on Criminal Law

DECEMBER

4-5 Monday-Tuesday
Committee on the Judicial Branch

5-6 Tuesday-Wednesday
Committee on Court Administration and Case Management

6-7 Wednesday-Thursday
Committee on Judicial Resources

6-8 Wednesday-Friday
Committee on Defender Services

7-8 Thursday-Friday
Committee on the Administration of the Magistrate Judges System

CLERK OF COURT, District of Maryland

The Clerk, who operates under the direction of the Chief Judge and the court, manages a staff of approximately 80. The court has ten active district judges, six senior judges, seven full-time magistrate judges, and two part-time magistrate judges. The Clerk is responsible for establishing and managing a budget in excess of 4 million dollars. The Clerk's Office is headquartered in Baltimore with a divisional office in Greenbelt. Applicants must have an undergraduate degree and a minimum of ten years of management experience of increasing responsibility in the private or public sector. Substantial experience in personnel and budget management is required. Experience in federal judicial administration is desirable but not mandatory. The Clerk must be committed to and capable of demanding and achieving high employee performance, instilling high morale, effectively managing employees' time, coordinating the effective resolution of buildings and facilities issues, and serving the court's needs. Salary: \$96,530-\$114,129. An original and four copies of a resume and cover letter must be submitted to Clerk of Court Search Committee, c/o Betsy Michael, U.S. District Court for the District of Maryland, Room 441, 101 West Lombard Street, Baltimore, MD 21201. Applications must be received no later than **January 31, 1996**.

CLERK OF COURT, Northern District of Illinois

This metropolitan court headquartered in Chicago with a divisional office in Rockford seeks an experienced administrator for the position of Clerk of Court. By local rules, the Clerk serves as the court administrator. The appointee is responsible for administrative management of nonjudicial functions of the court. Applicants must have a minimum of 10 years of management experience of increasing responsibility. Substantial experience in personnel and budget management is required. Experience in federal judicial administration is desirable but not mandatory. Applicants must have an undergraduate degree. A professional degree in law, business administration, or public administration is desirable. Salary: \$97,848-\$115,687. An original and five copies of the cover letter and resume must be sent to H. Stuart Cunningham, P.O. Box A3595, Chicago, IL 60690. Closing date for applications is **January 31, 1996**.

ASSISTANT FEDERAL PUBLIC DEFENDER, Southern District of Illinois

Applications are being accepted for the position of Assistant Federal Public Defender to be located either in Benton or East St. Louis, Illinois. Qualified applicants must be members in good standing of the bar of any state or territory, have three years experience in the practice of law, with substantial criminal trial experience, knowledge of federal criminal trial practice and federal sentencing guidelines with the ability to immediately undertake the defense of serious criminal cases in U.S. district court, and have a reputation of integrity and commitment to the representation of those unable to afford counsel. Salary commensurate with assistant U.S. attorneys. Send resume (stating location preference, if any), references, and writing sample to Federal Public Defender, P.O. Box 159, East St. Louis, IL 62202. Application deadline is **December 11, 1995**.

EQUAL OPPORTUNITY EMPLOYERS

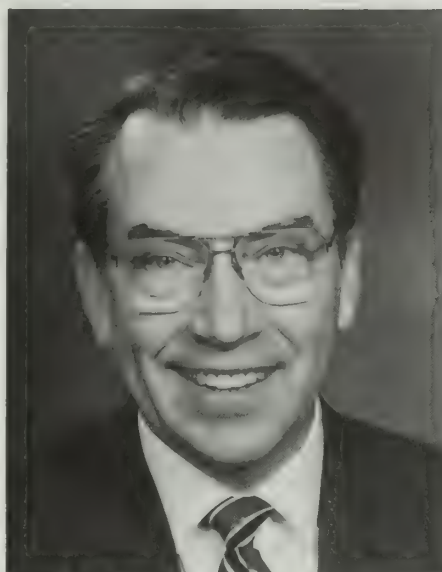
Senate Holds Hearing on Allocation of Judgeships

Last month Senator Charles E. Grassley (R-IA), chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, presided over a hearing that he said will be the first of several on the allocation of judgeships in the federal judiciary.

"Some say that Congress should let judges decide how many judgeships should exist and how they should be allocated," Grassley said. "I agree that we should defer to the Judicial Conference to some degree. However, there have been numerous occasions in the past where Congress has added judgeships without the approval of the Judicial Conference. . . It seems to me that if Congress can create judgeships without judicial approval, then Congress can have existing judgeships vacant or abolish judgeships without judicial approval."

While the hearing focused on the U.S. Court of Appeals for the D.C. Circuit, Grassley indicated that he plans to broaden his inquiry and early next year conduct further hearings on the general allocation of judgeships. The D.C. Circuit has 12 authorized judgeships. The twelfth position, which was created in 1984, has been vacant since Chief Judge Robert M. Mikva resigned in September 1994. Merrick B. Garland was nominated as his replacement in September 1995.

Chief Judge Harry T. Edwards (D.C. Cir.) told the subcommittee that the D.C. Circuit has been recognized as having a unique and complex caseload that includes actions of national urgency and would benefit from having the vacancy filled. "In my view, there is no doubt that we will be better off with 12 [rather] than 11 judges," Edwards said. "First, we will increase the likelihood of improving the time of disposition and reducing the backlog.



Senator Charles E. Grassley

Second, we will ease the pressure that we have been putting on our special panels, and hopefully reduce the need to decide more cases without oral argument and without written opinion. Third, we will ease the burdens of scheduling, because since we sit in panels of three judges, it is easier to schedule 12 than 11 judges each sitting period. Fourth, we will allow our judges some measure of additional time to reflect on some of the incredibly difficult cases that come before the circuit."

Judge Laurence H. Silberman (D.C. Cir.) urged that the vacant judgeship be eliminated outright. "The more judges on a court, the more difficult it is to maintain a coherent stream of decisions and the greater a diminution in the character and collective decision-making. No appellate court, therefore, should hold more judges than necessary to do the work." Silberman told the subcommittee that the court has grown accustomed to working with only 11 judges and that it was not at all clear to him that if a twelfth were added the court would be more productive. "I suggest that you eliminate it [the vacant judgeship] not just leave it unfilled," he said.

Also testifying at the hearing were Associate Attorney General John Schmidt; David L. Cook, chief of the Administrative Office's Analytical Services Office; and Robert N. Weiner, president of the District of Columbia Bar.

Grassley said that the hearing "is about the prudent use of taxpayer money." As Congress downsizes its committees and eliminates support agencies and the executive branch faces possible elimination of cabinet posts, Grassley said he wants to look at the Judiciary's use of taxpayer money. He also said he will review a letter he received from Chief Judge Morey Sear (E.D. La.) that was signed by a majority of the judges on the court, recommending that two existing vacancies on the court not be filled. As part of his probe, Grassley said he will study the amount of time used by judges for teaching, advising foreign governments, and other non-case related activities.

JUDICIAL BOXSCORE

As of November 1, 1995

Courts of Appeals	
Vacancies	13
Nominees	6
District Courts	
Vacancies	47
Nominees	23
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	
	18

New Codes of Conduct Adopted

Noting in its canons that, "An independent and honorable Judiciary is indispensable to justice in our society," the Judicial Conference has adopted new codes of conduct for judicial employees and federal public defenders. They become effective January 1, 1996.

The new code for judicial employees consolidates and replaces five existing judicial employee codes of conduct. It extends to all judicial employees except justices, judges, and employees of the U.S. Supreme Court, the Administrative Office, the Federal Judicial Center, and the Sentencing Commission, all of whom are subject to their own codes or standards. The new code for federal public defender employees replaces an existing code and applies to all defender employees, including administrative and clerical staff.

The Judicial Conference Committee on Codes of Conduct developed the new codes over a three-year period, circulating them most recently for review in March of 1995 and requesting comments on proposed changes from Judicial Conference committees, judges, and judicial employees.

Judicial Employees Code of Conduct

Most significantly, the new judicial employees code of conduct now extends to many employees who were not previously named; for example, the code covers all members of judges' personal staffs, which includes judges' secretaries and law clerks. Contractors and other non-employees serving the Judiciary are not covered by the code, but these standards may be imposed on them by contract.

Among its new features, the Code of Conduct for Judicial Employees contains a new conflict of interest provision, cautioning employees to

avoid conflicts of interest in the performance of official duties and advising them of procedures to follow in resolving actual or apparent conflicts. Another new provision states explicitly that employees may not use public office for private gain.

Under the new code, judicial employees may continue to engage in a variety of outside activities, including speaking, writing, lecturing and teaching. If these activities are law-related, employees should first consult with the appointing authority. Of course, all outside activities are subject to general cautionary standards to ensure that they do not interfere with or reflect poorly on the employee's official position and duties.

The new code states that employees may engage in the practice of law pro se, perform routine legal work incidental to their personal and family affairs, and provide limited pro bono legal services subject to stringent restrictions. These standards also apply when judicial employees serve as uncompensated mediators or arbitrators for non-profit organizations.

As in the previous codes, partisan political activity is prohibited. Judicial employees, except for members of judges' personal staffs and certain court unit heads, may engage in nonpartisan political activities.

Federal Public Defender Employees Code of Conduct

The new defender employee code resembles the new judicial employees code, with some variations. New conflict of interests provisions in the defender code are similar to those formulated for judicial employees, as is the provision prohibiting use of public office for private gain.

Unlike the judicial employee code, the defender employee code

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does not permit pro bono practice of law. Also, the new defender code permits employees to engage in a wide range of political activities, including partisan political activities, so long as appropriate standards of conduct are observed. Employees may not run for or hold partisan political office, may not solicit partisan political contributions, and may not engage in political activities while on duty or in the workplace.

Advice

The new codes will be published shortly in the *Guide to Judiciary Policies and Procedures*, Volume II. The Committee on Codes of Conduct is available to render advisory opinions concerning the application and interpretation of these codes.

Congress Nullifies Proposed Guidelines

The President has signed S. 1254 into law, as P.L. 104-38. S. 1254 was passed by Congress last month to nullify proposed amendments to the U.S. Sentencing Guidelines. The amendments would have established a 1:1 ratio for powder and crack cocaine, changing existing guidelines in which 100 times as much powder cocaine as crack cocaine is needed to trigger the same mandatory penalties.

Senator Spencer Abraham (R-MI) introduced S. 1254, a bill to disapprove of amendments to the Federal Sentencing Guidelines relating to lowering of crack sentences, sentences for money laundering and transactions in property derived from unlawful activity. The Senate passed S. 1254 in late September, and last month the House passed the Senate bill, in lieu of its own H.R. 2259. According to Abraham, the U.S. Sentencing Commission's proposed

amendments, "[s]ends entirely the wrong message: that in the war against crack, society has blinked." He agreed with the commission that there is some basis for believing that the differential in the sentences may be too great. "But the answer," said Abraham, "is not to lower the crack sentences. The answer is to toughen the powder sentences." He has introduced S. 1253, a bill to amend the Controlled Substances Act with respect to penalties for crimes involving cocaine. This bill would lower the quantities of cocaine powder necessary to trigger mandatory minimum penalties. One kilogram, rather than 5 kilograms, would activate the 10-year minimum and 100 grams, rather than 500 grams, would trigger the 5-year minimum sentence. Similar legislation has been discussed in the House, but no bill has been offered.

Cowen Named Committee Chair



Judge Robert E. Cowen

The Chief Justice has named Judge Robert E. Cowen (3d Cir.) the new chair of the Judicial Conference Security, Space and Facilities Committee, succeeding Judge Robert C. Broomfield (D. Ariz.). His appointment was effective October 1, 1995.

JUDICIAL MILESTONES

Appointed: Joseph H. McKinley Jr., U.S. District Judge, U.S. District Court for the Western District of Kentucky, August 25.

Appointed: James Maxwell Moody, U.S. District Judge, U.S. District Court for the Eastern District of Arkansas, September 21.

Appointed: M. Bruce McCullough, U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Pennsylvania, September 22.

Appointed: Michael R. Murphy, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Tenth Circuit, October 5.

Appointed: Donald C. Pogue, as U.S. Court of International Trade Judge, U.S. Court of International Trade, August 25.

Appointed: Stephen C. St. John, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court of the Eastern District of Virginia, September 27.

Appointed: Evan J. Wallach, as U.S. Court of International Trade Judge, U.S. Court of International Trade, September 25.

Elevated: Bankruptcy Judge James J. Barta, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of Missouri, succeeding

Chief Bankruptcy Judge Barry S. Schermer, October 1.

Elevated: Judge D. Brook Bartlett, to Chief Judge, U.S. District Court for the Western District of Missouri, succeeding Chief Judge Joseph E. Stevens, Jr., July 1.

Elevated: Judge Joseph P. Stadtmueller, to Chief Judge, U.S. District Court for the Eastern District of Wisconsin, succeeding Chief Judge Terence T. Evans, September 1.

Deceased: Judge William D. Hutchinson, U.S. Court of Appeals for the Third Circuit, October 8.

Interview continued from page 1

issue, and it might be the case that the committee will take workload into consideration when filling certain vacancies. However, it is too soon to tell, and we have only begun our analysis of the problem.

Q: The Judicial Conference has transmitted to Congress a draft judgeship bill that would create 20 temporary appellate judgeships and 23 district court judgeships. Do you expect that a judgeship bill will be considered during the 104th Congress?

A: Although the Judicial Conference has transmitted its request for additional judgeships to Congress, its draft bill has not been introduced. Thus, the Judiciary Committee does not have a judgeship bill pending before it, and no hearings have been held on the topic. Because of that, coupled with the tremendously busy schedule in the Judiciary Committee, it is not clear whether a judgeship bill will be considered this Congress. Still, were a judgeship bill to be considered, a reduction of judgeships for courts with lower workloads will almost certainly enter into the equation.

Q: You recently conducted a hearing on a proposed split of the Ninth Circuit. As you know, most of the judges who sit on that court are strongly opposed to a split. How is this weighed in determining the fate of this bill?

A: The views of the Ninth Circuit judges on this issue remain vitally important to me. That is why I invited two judges from that circuit, Chief Judge J. Clifford Wallace and Judge Diarmuid O'Scannlain, to testify at the hearing

I chaired. Although most of the judges on that court are on record as opposed to a split at this point, the judges on the Ninth Circuit are by no means of a unanimous view on this question. While Congress should take into account the experiences of the Ninth Circuit judges, Congress has an independent responsibility to ensure the efficient functioning of the federal Judiciary. The experience of the judges of the old Fifth Circuit prior to its split is also instructive. As Chief Judge Gerald Bard Tjoflat of the Eleventh Circuit reminded me at

"Our federal judges certainly must be looked after in retirement, both in appreciation for their service to our country and so that we can continue to attract the highest quality individuals to the federal bench."

the Judiciary Committee hearing, at the time that legislation to split the old Fifth Circuit was pending in Congress, the then-chief judge of the Fifth Circuit and several other judges opposed a split. The split of the Fifth Circuit was ultimately heralded as a success. While it is unclear at this point what action, if any, Congress will take affecting the Ninth Circuit, I look forward to continuing to discuss these issues with the dedicated judges of the Ninth Circuit.

Q: You co-sponsored the Federal Courts Improvement Act, a bill which contains numerous provisions of great importance to the operation and administration of the Judiciary. What are the prospects for this bill in the 104th Congress? Are there aspects of this legislation that you believe will gain easy approval and portions that will not?

A: I introduced S. 1101, the Federal Courts Improvement

Act of 1995, "by request" on behalf of the Administrative Office of the United States Courts so that Congress could have the Judiciary's legislative suggestions on record as proposed. The Judiciary's lengthy bill covers a broad range of topics, many of which will require detailed consideration in the Judiciary Committee. The Subcommittee on Administrative Oversight and the Courts held a hearing on the bill on October 24, and is expected to mark up the bill in the relatively near future. At that point, the bill will come

before the full committee.

In terms of content, some sections of the bill I expect to be non-controversial, such as the provision authorizing pretrial services and probation officers to carry weapons. Other provisions will surely raise more concern. For instance, those provisions concerning judicial retirement will no doubt receive close scrutiny, particularly to determine what costs they would impose on the government. Our federal judges certainly must be looked after in retirement, both in appreciation for their service to our country and so that we can continue to attract the highest quality individuals to the federal bench. At the same time, we live in an era of extreme budgetary pressures that constrain all of us in the government, whether in the legislative, executive, or judicial branches.

Q: Few issues have been as controversial as crime control legislation. Do you think we

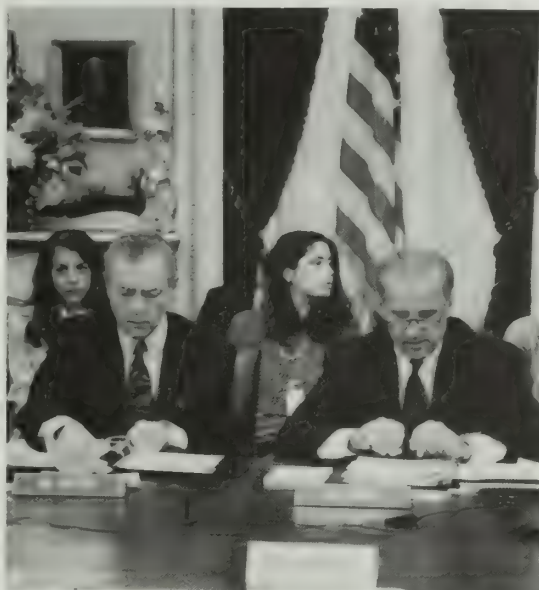
likely to see a crime bill pass through houses in the first or second session of this Congress? If so, do you expect it to include issues such as habeas corpus reform, the federalization of firearms offenses, and mandatory restitution?

A: The Senate recently passed a comprehensive anti-terrorism legislation. That legislation contained many significant provisions from my crime bill, S. 3, such as habeas corpus reform and revisions to terrorist alien removal. The Commerce, Justice, and State Appropriations bill contains a significant revision of the 1994 Crime Act's prison grants program and a major new proposal on prison litigation reform. The Senate has passed significant new anti-crime legislation in these bills. I am pleased by the progress we have made this year adopting bold new anti-crime initiatives. Habeas corpus reform may well be the most significant final procedure change in the past decade. I anticipate moving a victims' restitution bill before we go out of session this year and look forward to having crime and drug issues high on the Judiciary Committee's agenda next session.

Q: You have spoken of the need for there to be a serious role in fighting crime, but also have been sensitive to the impact of increased federalization. How do you balance these interests so that federal presence in crime fighting is effective without the federal courts being overwhelmed?

A: In order to balance the interests of the states and the national government in fighting crime, it is important to understand the principles of federalism underlying our political system. States and localities have the primary responsibility

in fighting what we call violent crime—murder, robbery, arson and the like. In these areas, the federal role is properly limited to backing up state and local law enforcement agencies. The FBI's crime lab, for example, is a good example of a federal resource for state governments to draw upon.



(L to R) Senate Judiciary Committee Chairman Orrin G. Hatch with Ranking Minority Member Joseph R. Biden, Jr. presides over a Judiciary Committee hearing.

The national government's primary role should be limited to those crimes that have a truly international or interstate character. International drug interdiction efforts, for example, are the responsibility of the national government. Crimes that transcend state boundaries, such as interstate stalking, are also well suited to federal prosecution, as are crimes committed against federally backed financial institutions, such as banks.


We must be careful neither to overburden the federal courts, nor to intrude upon the states' interests. For this reason, habeas corpus reform is essential. Habeas reform is necessary to prevent federal courts from re-trying criminals convicted in state court. The Senate-passed habeas corpus reform proposal will

contribute to reducing the burden on federal courts and to eliminating meritless inmate litigation.

Q: It appears that Congress may not accept the U.S. Sentencing Commission's proposed amendment to the Sentencing Guidelines, which equalize the sentences for trafficking in or possessing crack and powder cocaine instead of the present 100 to 1 ratio. (See related story on page 9.) If Congress is unable to accept the Commission's proposed 1 to 1 ratio, do you think there is a potential for compromise somewhere in the middle? Are there other sentencing reforms your committee is likely to address in this Congress?

A: As your readers are aware, on September 29 the Senate voted unanimously against weakening penalties for dealing in crack cocaine. The House overwhelmingly passed the same bill on October 18, with the strong support of the Clinton Administration.

Under current law, sentences for crack trafficking range between two and six times higher than for a comparable quantity of powder cocaine. That is a reasonable differential. Crack is more addictive than powder cocaine, it has been more destructive in poor inner-city neighborhoods, and it is associated with the explosion in the most horrifying cases of child abuse in recent years.

Claims to the contrary aside, there are virtually no youthful, non-violent, low-level crack dealers in federal custody. Under the so-called "safety valve" provision of last year's Crime Act, which repealed mandatory minimum penalties for first-time, non-violent, low-level offenders are now eligible for especially lenient sentences. 

Legislation continued from page 3

■ Establish the Middletown-Wallkill area as a place of holding court in the Southern District of New York, as approved by the Judicial Conference. Another amendment would designate Plano, Texas, as a place of holding court for the Eastern District of Texas.

Also testifying at the hearing with Judges Sanders, Diamond, and Anderson was Judge W. Earl Britt (E.D. N.C.) in his capacity as president of the Federal Judges Association (FJA). The FJA voiced its support for the repeal of Section 140, and for Senator Heflin's bill, S. 1344, to delink cost-of-living adjustments for federal judges from members of Congress and executive schedule employees (See box on page 3). The FJA also supports the lowering of the age at which some Article III judges may take senior status.

Representatives from the American Bar Association (ABA), the Defense Research Institute, and the Na-



(L to R) Judge Stephen H. Anderson (10th Cir.) greets subcommittee chair, Senator Charles E. Grassley prior to the hearing.

tional Association of Criminal Defense Lawyers also testified. The ABA opposes provisions in S. 1101 eliminating diversity jurisdiction for an in-state plaintiff and raising the jurisdiction amount in diversity cases. The association supports repeal of Section 140, and "an integrated system model for the deliv-

ery of defense services that includes adequately funded and staffed public defender offices in every jurisdiction where conditions permit," and enhanced support and appropriate compensation for panel attorneys. ⚖️

THE THIRD BRANCH

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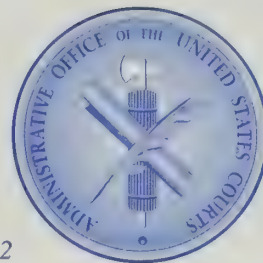
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December 1995

Chief Justice Acts on Budget Crisis

On December 7, Chief Justice William H. Rehnquist sent the following letter to Vice President Al Gore, President of the Senate, and Representative Newt Gingrich, Speaker of House of Representatives.

Dear Mr. President and Mr. Speaker:

As Presiding Officer of the Judicial Conference of the United States, I respectfully request that the Congress take action to pass a free-standing FY 1996 funding bill for the Judiciary. I have reluctantly come to the conclusion that this is necessary because the uncertain budget situation we face may be damaging our judicial system. It is especially critical in light of recent news accounts that H.R. 2076, the Commerce, Justice, State and Judiciary Appropriations Bill most likely will not be signed into law by December 15, when the current Continuing Resolution expires. Further, we understand that the President will likely veto the bill agreed to recently by the Conferees on H.R. 2076. At that point, the legislative branch, the White House and most executive branch agencies would have enacted FY 1996 appropriations, but the judicial branch would not. I am worried about the adverse impact on the courts, judicial employees, and the public if there is another funding lapse.

I am informed that the portion of H.R. 2076 Conference Report dealing with the Judiciary is not controversial. Unfortunately, the effective and efficient operation of the judicial branch is being jeopardized by the controversial policy differences involving executive branch agencies in the bill.

We are hopeful that the Judiciary's budget for FY 1996 can be extricated from the middle of this struggle between the other two branches of government. Our primary goal is to ensure that the courts continue to provide our citizens the full range of judicial services that they desire and deserve.

Sincerely,

William H. Rehnquist

An Inside Look at the Shutdown

The federal Judiciary survived the first government shutdown since 1990 and the longest in the history of the nation. However, with courts restricting hiring of personnel, delaying acquisition of equipment and travel, and each day giving rise to new uncertainties and fiscal questions, a funding lapse longer in duration may well have produced a different result.

In the four days that government service was disrupted, there were numerous questions that arose and several bumps in the road that were encountered as the Judiciary navigated its way through what was essentially uncharted territory. What would happen when the funds were depleted to pay lawyers appointed under the Criminal Justice Act? Would those who traveled for essential court business be repaid? Would employees who were absent on annual or sick leave be charged for their leave? What impact would the appropriations lapse have on various contracts? Court employees, like other government workers, were uncertain if they would be paid whether they worked or not during the shutdown period. And while the case-related functions continued, the ad-

See Shutdown on page 2

INSIDE

Courthouse Construction Reviewed
Mandatory Restitution Hearing Held
A Look at Multidistrict Litigation

4
7
10

Shutdown continued from page 1
ministrative machinery that helps the federal Judiciary operate seemed to face different challenges nearly every hour.

The Courts

In the absence of funding, the *Guide to Judiciary Policies and Procedures* provides courts with specific guidelines based on the Anti-Deficiency Act and the Constitution. Several circuits had formalized adoption of these guidelines by issuing court orders. The guidelines recognize the unique function of the Judiciary and anticipate that all activities "essential to maintain and support the exercise of the judicial power of the United States will continue." Some judges entertained motions for continuances in civil cases and at least one district court announced that it would not start any new civil jury trials. An appellate court had to reschedule several arguments because government lawyers were unable to attend. Otherwise, the federal courts generally continued to exercise their judicial powers.

Nevertheless, courts encountered numerous issues relating to their daily operations and spent a disproportionate amount of time addressing issues tangentially related to the funding lapse. Personnel questions were common. Because of the uncertainty about the length of the funding lapse and whether employees would get paid, some court staff canceled scheduled vacations. Questions arose as to whether a judge could order a transcript. Could a calling card be used to make a court-related long distance phone call? Could a GSA credit card be used to put gas in a government van? Had the funding lapse continued much longer, some courts indicated that they would have run into problems with service agreements, emergency repairs, and supply purchases.

In addition, the Judiciary depends on the services of the executive branch in order to operate daily. The Department of Justice through its Executive Office of U.S. Attorneys, U.S. Marshals Service, and Bureau of Prisons performs duties that are essential to court operations. During the four-day-long government shutdown, skeleton crews were in place to provide these services.

The Department of Justice

The Department of Justice advised the Office of Management and Budget (OMB) that it was the department's intent to continue criminal litigation without interruption "as an activity essential to the safety of human life and the protection property." A letter from Deputy Attorney General Jamie Gorelick to OMB Director Alice Rivlin stated, "Civil litigation will be curtailed or postponed, to the extent that the court will permit such an approach without harm to the interests of the United States. In the event that such an approach is not possible, civil litigation will continue without interruption as an activity essential to the protection of property."

The Attorney General determined that 64,715 (65.7 percent) of the 98,545 full-time permanent (FTP) employees on board at the Department of Justice were emergency and would not be furloughed. This meant that 4,931 (not including the 93 U.S. attorneys who are presidential appointees and not subject to furlough) of the FTP employees in the Executive Office of U.S. Attorneys were designated as emergency; 3,236 of 3,667 FTP employees in the U.S. Marshals Service were designated emergency; 23,721 of 25,494 FTP employees in the Bureau of Prisons were designated emergency; 96 of 1,078 FTP employees at the U.S. Trustees Program were designated emergency; and four of the 75

employees at the U.S. Parole Commission were designated as emergency.

Reduced Staff Copes With Business As Usual

More than two-thirds of the staff at the Administrative Office was furloughed. "The AO found itself in a very difficult and tentative predicament," said Director L. Ralph Meham. "On one hand, we wanted to follow the example of other government agencies and retain only our emergency employees, but on the other hand, we had a responsibility to continue providing service to the courts, Congress, and others who were conducting business as usual." As a result, Meham said, "The limited staff we had in place was scurrying about plugging holes and juggling responsibilities. At the end of the four-day furlough I concluded that we need every single player on our team to successfully accomplish the AO's mission."

Every morning at 10 a.m., the AO's Executive Management Group assembled to discuss issues relating to operations in the absence of an appropriation. The first of a series of Judicial Conference committee meetings was two weeks away. Would committee meetings have to be canceled and rescheduled? Would this impact on the March session of the Conference? The Office of Judicial Conference Executive Secretariat wrestled with this issue, while trying to maintain the semblance of a schedule for reviewing committee agenda materials.

Federal Judicial Center Director, Judge Rya W. Zobel, furloughed all FJC employees with the exception of Deputy Director Russell Wheeler and Personnel Officer Jeannette Sisson. The center suspended all local training programs but continued some orientation programs that were funded from two-year money and provided a limited staff to

represent the programs. The U.S. Sentencing Commission furloughed nearly all its staff, keeping a rotating staff of three or four people to respond to telephone calls.

Disruptions Felt Throughout Judiciary

Various training programs and umbrella group meetings were cancelled. AO and court employees who were on travel were brought home, often at an increased expense. Disruption of hardware and software testing occurred. Due dates for projects were missed and planned activities were postponed or cancelled. Numerous organizational meetings were held to plan for the shutdown and resume services following the passage of the new continuing resolution.

The AO was forced to cancel training for most of the Fourth Circuit on the Court Personnel System, delaying its anticipated date for switching to the new system. The AO's Court Services Branch, which normally handles 400 phone calls a day, fielded more than 800 a day during each of the four days of the furlough. Other AO offices also found that they were busier than normal. The FlashFax service, which is used to fax high priority, time-sensitive memoranda to the courts, was in constant use. Some offices also found that projects were delayed. For instance, the Statistics Division, which has the responsibility for producing certain statutorily mandated reports, found that the furlough placed its deadlines in jeopardy.

Uncertainty Takes Its Toll

The lawyers present in the AO's Office of General Counsel almost hourly were tackling novel legal issues. Human resources senior staff

were preparing question and answer sheets for court employees discussing the impact of furloughs on pay and benefits. The Financial Liaison Office was monitoring developments with the budget impasse and attempting to predict when a resolution would be reached. The AO established a hotline, which was updated throughout the day with information about the budget negotiations.

The resources of many AO offices were dedicated largely to issues



relating to the furlough, meaning that other less pressing matters were placed on hold. From late August until the continuing resolution was signed on November 22, the Budget Division issued 20 memos to the courts and AO staff on a wide array of issues relating to the funding crisis. Some people who contacted the AO were surprised to learn that there would be a delay in responding to some questions because of the furlough. There was a level of discomfort with the uncertainty as to when a response would be forthcoming, since nobody knew how long the partial shutdown would last. As one AO senior staffer put it, "People may be accustomed to hearing that someone who can help them is out of the office, but they are not used to being told it is unknown when that person will be


back. It could be the next day, the next week, or the next month and they will have to listen to the news for the answer."

Congress Works In the Shutdown

Both houses of Congress were busy during the shutdown, conducting hearings and marking up bills that were of interest to the courts, including mandatory restitution legislation. There also were important follow-up questions to be answered from recent congressional hearings. As a result, the AO's congressional staff was busy monitoring numerous issues in the House and Senate. Many congressional offices contacted the AO just to find out how the courts were coping with the funding lapse. Numerous media representatives called daily and

sometimes twice a day to check how the appropriations lapse was affecting the courts.

Will History Repeat?

The award for the most unusual request during the furlough period goes to the district clerk's office that was asked by a member of the public whether taxpayers can expect to receive a break from the Internal Revenue Service because of the amount of time the government was not in business. The White House estimated that the four-day furlough cost taxpayers between \$700 and \$800 million. And, of course, the worst news is, it could happen again. Since the shutdown, appropriation bills have been signed to fully fund the White House and Congress through next September 30. The Commerce, Justice, State and the Judiciary appropriation bill has been conferenced by both Houses but is expected to be vetoed by the President because of controversial issues unrelated to the Judiciary's portion of the funding measure. 

Senate Committees Review Courthouse Construction Program



(L to R) Judge Robert E. Cowen (3d Cir.) and AO Director L. Ralph Mecham testified before the Senate Environmental and Public Works' Subcommittee on Transportation and Infrastructure.

Last month, Judiciary representatives appeared before two Senate subcommittees to testify on courthouse construction. At both hearings, senators closely examined the issues of cost containment and improved management, taking a tough line of questioning with not only the Judiciary but with representatives of the General Services Administration (GSA) and the General Accounting Office (GAO) as well.

Environmental and Public Works' Subcommittee on Transportation and Infrastructure

At the first hearing, Judge Robert E. Cowen (3d Cir.), chair of the Judicial Conference's Security, Space and Facilities Committee, and Administrative Office Director L. Ralph Mecham, in his capacity as secretary to the Judicial Conference, testified before the Senate Environmental and Public Works' Subcommittee on Transportation and Infrastructure. They told the subcommittee of the Judiciary's on-going efforts to economize and prioritize as the courts' space and facilities needs were assessed and as they were impacted by the GSA courthouse-re-

lated initiatives. They urged Congress not to place a moratorium on building new courthouses.

The two Judicial Conference representatives asked for authorization of seven already approved fiscal year 1995 projects and nine FY 96 projects already included in the Treasury, Postal Service, and General Government Appropriations Act of 1996. In turn, Senator John Warner (R-VA), the subcommittee chairman, asked the Judicial Conference for a list of all FY 95 and 96 projects pending before the committee ranked by priority. (See box on page 5.) While the Judiciary responded fully to the subcommittee's request, in his testimony Cowen reminded the Senate subcommittee of the inherent difficulties of such a ranking. "For example," said Cowen, "some projects could prove to be of equal urgency, and it could be difficult to compare one particular local housing situation with another. We also must weigh the competing factors of security, health and safety, and the need for space to house judges."

Nevertheless, Cowen said that for FY 97 and beyond the Security,

Space and Facilities Committee will recommend that the Judicial Conference adopt criteria for ranking projects within a given year, in order of priority. "At its last session in September," Cowen said, "the Judicial Conference approved a 5-year plan for courthouse construction projects. The plan includes a listing of projects prioritized by fiscal year, that reflects the housing needs of the Judiciary from fiscal years 1996 through 2000." When the Conference next meets in March 1996, it will be asked to adopt a formal set of criteria for prioritization of projects in a given year, Cowen said.

Cowen also discussed cost containment initiatives by the Judiciary, including the recently announced review of the *U.S. Courts Design Guide's* space standards, a reevaluation of space needs by court units, and a review of the Judiciary's space rental payments to the GSA, which currently total about \$520 million annually. Other initiatives will involve establishing criteria for opening or closing facilities, and the development of a detailed space inventory and benchmarks to encourage more efficient space management.

In his written testimony, Mecham addressed the GSA inspector general's report on courthouses. Saying he was reluctant to draw any conclusions about its contents, Mecham noted several instances where terminology might be misleading and conclusions inconsistent with similar reports issued by panels of construction professionals. Said Mecham, "We were all a bit disappointed in the lack of communication from the GSA on this report."

In his testimony, GSA Administrator Roger Johnson told the subcommittee that in one or two years' time the Judiciary had received 70 percent of available federal funds for buildings, and he proposed actions to

ensure individual courthouses do not drain the resources of the federal buildings fund." Mechem was quick to respond that over the last decade, through rent paid to the GSA, the Judiciary contributed over \$3 billion to that fund at a time when there was little courthouse construction or renovation.

Mechem expressed his objections to another GSA-proposed moratorium or time out on courthouse construction. "GSA's letter, its IG report, and a soon to be released General Accounting Office review of courthouse construction recognize that significant progress has been made to ensure delivery of cost-effective, well-managed projects. We have gone through one time out and renewal, which has been touted as being immensely successful. . . . Clearly interested parties should sit down on matters of concern, define issues, and determine the responsible organization or branch address the issue to the satisfaction of the others. . . . We fail to see the need for another task force to work out any concerns."

Governmental Affairs Committee's Subcommittee on Oversight of Government Management and the District of Columbia

A week later, the Judiciary was again represented at a Senate hearing on courthouse construction. Judge Robert E. Cowen testified before the Senate Governmental Affairs Committee's Subcommittee on Oversight of Government Management and the District of Columbia. P. Gerald Thacker, assistant director of the AO's Office of Facilities, Security and Administrative Services, accompanied Cowen. This was the second hearing before the subcommittee in little over a year. Then as now, the subcommittee questioned the steps the Judiciary has taken to improve its role in management of the courthouse construction program while also reducing costs.

The first panel of witnesses, including J. William Gadsby, director of Operations Issues in the GAO's General Government Division, presented the GAO's review of the courthouse construction initiative. Gadsby told the subcommittee that the review faulted both the GSA and the Judiciary for the lack of a comprehensive strategic plan and defensible priority-setting system to facilitate and guide courthouse decisionmaking. "This has led to the substitution or addition of projects for which there has been little or no planning or evaluation," said Gadsby, who also noted the

AO's "vigorous effort" to provide each of the districts with guidance for assessing and projecting space needs.

The review, according to Gadsby's testimony, found that limited oversight and controls over courthouse construction costs had led to variances in construction costs. The GAO recognized that while "courthouses should not be cookie-cutter projects and that decisionmakers need flexibility to design and construct courthouses, such flexibility can and should be better managed."

See Courthouses on page 6

Ranking of FY 95 and FY 96 Courthouse Projects*

At Congress' request, the Judiciary ranked by priority courthouse construction projects for the fiscal years 1995 and 1996 pending before the authorization subcommittee. Factors used to rank projects included the severity of security problems, proximity of award dates for construction or design contracts, the year the existing courthouse reached capacity, the number of judges impacted by the project and whether appropriated funds will be available. The Security, Space and Facilities Committee proposed the criteria used in ranking the projects, and with the approval of the Judicial Conference's Executive Committee, the following ranking was produced.

- | | |
|------------------------------|------------------------------|
| 1. Islip, New York | 13. Columbia, South Carolina |
| 2. Tucson, Arizona | 14. Savannah, Georgia |
| 3. Brownsville, Texas | 15. Albany, Georgia |
| 4. Corpus Christi, Texas | 16. London, Kentucky |
| 5. Lafayette, Louisiana | 17. Greeneville, Tennessee |
| 6. Omaha, Nebraska | 18. Covington, Kentucky |
| 7. Old San Juan, Puerto Rico | 19. Washington, D.C. |
| 8. Scranton, Pennsylvania | 20. Fresno, California |
| 9. Tallahassee, Florida | 21. San Diego, California |
| 10. Albuquerque, New Mexico | 22. Youngstown, Ohio |
| 11. Las Vegas, Nevada | 23. San Jose, California |
| 12. Jacksonville, Florida | |

**Funding for the Brooklyn, New York, courthouse is not needed until FY 97 and FY 98. The Charleston, South Carolina, courthouse is currently planned to be accommodated through a below prospectus project but will be ranked in the future should a prospectus project be required.*

Courthouses continued from page 5

Judge Tom Stagg (W.D. La.), who also testified at the hearing at the request of the subcommittee, offered his perspective on this point. "I am firmly convinced that every courthouse construction program needs a judicial person or committee," said Stagg, "who can exercise some measure of leadership and hardfisted control on behalf of the court, in order for the project to be satisfactorily completed." In a letter to Senator William S. Cohen (R-ME), the subcommittee's chair, Stagg also defended the appearance of courthouses, criticized in the past for their Taj Mahal-like designs. "[A] court structure is an office building with enough added finishes to bring a measure of dignity and majesty to the users and occupants. When one is 'brought to the law,' it ought to, at least, be impressive. The lack of limitations on these added finishes are the source of most recent conflicts I have read about."

The GAO review reported that the recent GSA "Time Out and Review" initiative identified about \$324 million in savings from 43 courthouse construction projects, but faulted the GSA's lack of a systematic approach to oversee and manage the design and construction of projects. The review also noted that the Judiciary has taken steps to resolve concerns, including a recent revision of the *U.S. Courts Design Guide*.

In his testimony, as he did for the Senate Environmental and Public Works' Subcommittee on Transportation and Infrastructure, Cowen detailed for the subcommittee the various initiatives the Judiciary continues to implement—including a 5-year plan for courthouse construction projects, a review of the *U.S. Courts Design Guide's* space standards, a reevaluation of space needs by court units, and a review of space billing from the GSA—that

should correct misconceptions about federal courthouses and address issues raised by the GAO and the GSA's inspector general.

Although the GAO once questioned the Judiciary's methodologies in its long-range planning approach, it has since reported that significant progress has been made in refining the process. The Judiciary remains one of the only entities in the federal government to pursue a long-range facilities planning effort, Cowen said.


"As we proceed, it would be very helpful to the Judiciary to have some guidance from Congress on what funding level should be assumed for the next several years," Cowen told the subcommittee. "We would then ensure that our projects meet relevant priority criteria and are within the appropriate funding caps."

The Judicial Conference already has approved the closing of six facilities and is working to establish criteria that could be used in evaluating the need for opening or closing facilities. Good space management practices have been put in place and consideration is being given to incentives to encourage more efficient space management and the release of space that exceeds benchmarks.

In addition, Cowen told the subcommittee the Judiciary has a limited, although important, involvement in the courthouse planning and design process.

"For many years, judges did not assume an active role in the design of courthouses," Cowen said. As a result, there are some courtrooms today that have columns that obstruct the view of court participants, poorly planned jury boxes, and work stations for court staff that impede the orderly conduct of proceedings. There are courthouses built in the mid-1970s and early 1980s that already are undergoing renovations. Ceiling treatments are peeling, and plaster walls are filled with patches and markings because of wear and

tear that could have been prevented if more durable materials had been used.

Cowen told the subcommittee that it is necessary for the size of various court units to change to accommodate the changing nature of the courts' workload. For instance, the well of a courtroom today must have sufficient space to accommodate as many as 50 people as the courts face an increasing number of multidefendant criminal trials. In addition, large amounts of evidence and complex technological equipment may fill the wells of courtrooms during certain trials. Space also must be designed to accommodate those with disabilities. 

Temporary Judgeship Starting Date Amended

S. 1328 was signed into law last month by the President as P.L. 104-60. The bill amends the date under which 12 temporary judgeships created by P.L. 101-650 will elapse. The new provision states that the first district judge vacancy occurring five years or more after the confirmation date of the judge appointed to fill the temporary position will not be filled. Previously, the law provided that the first vacancy occurring after December 1, 1995, in those districts with temporary judgeships would not be filled. However, the delay in nominating and confirming judges for some of the temporary positions meant that some districts would have only a brief time to benefit from the judgeship. The Western district of Michigan was excluded from the change because its needs are met by the current number of judgeships.

DECEMBER

Happy Holidays!

JANUARY

- 3-4 Wednesday-Thursday**
Committee on Automation and Technology
- 4-5 Thursday-Friday**
Committee on the Administration of the Bankruptcy System
- 8-10 Monday-Wednesday**
Committee on Security, Space and Facilities
- 9-12 Tuesday-Friday**
Committee on Rules of Practice and Procedure
- 11-12 Thursday-Friday**
Committee on the Administrative Office
- 11-13 Thursday-Saturday**
Committee on Codes of Conduct
- 18-19 Thursday-Friday**
Committee on Federal/State Jurisdiction
- 22-23 Monday-Tuesday**
Committee on Financial Disclosure
- 26-27 Friday-Saturday**
Committee on the Budget
- 29-31 Monday-Wednesday**
Workshop for Judges of the Ninth Circuit

CLERK OF COURT, District of Maryland

The Clerk, who operates under the direction of the Chief Judge and the court, manages a staff of approximately 80. The court has ten active district judges, six senior judges, seven full-time magistrate judges, and two part-time magistrate judges. The Clerk is responsible for establishing and managing a budget in excess of 4 million dollars. The Clerk's Office is headquartered in Baltimore with a divisional office in Greenbelt. Applicants must have an undergraduate degree and a minimum of ten years of management experience of increasing responsibility in the private or public sector. Substantial experience in personnel and budget management is required. Experience in federal judicial administration is desirable but not mandatory. The Clerk must be committed to and capable of demanding and achieving high employee performance, instilling high morale, effectively managing employees' time, coordinating the effective resolution of buildings and facilities issues, and serving the court's needs. Salary: \$96,530-\$114,129. An original and four copies of a resume and cover letter must be submitted to Clerk of Court Search Committee, c/o Betsy Michael, U.S. District Court for the District of Maryland, Room 441, 101 West Lombard Street, Baltimore, MD 21201. Applications must be received no later than **January 31, 1996**.

CLERK OF COURT, Northern District of Illinois

This metropolitan court headquartered in Chicago with a divisional office in Rockford seeks an experienced administrator for the position of Clerk of Court. By local rules, the Clerk serves as the court administrator. The appointee is responsible for administrative management of nonjudicial functions of the court. Applicants must have a minimum of 10 years of management experience of increasing responsibility. Substantial experience in personnel and budget management is required. Experience in federal judicial administration is desirable but not mandatory. Applicants must have an undergraduate degree. A professional degree in law, business administration, or public administration is desirable. Salary: \$97,848-\$115,687. An original and five copies of the cover letter and resume must be sent to H. Stuart Cunningham, P.O. Box A3595, Chicago, IL 60690. Closing date for applications is **January 31, 1996**.

EQUAL OPPORTUNITY EMPLOYERS

Barry Advises Senate on High Cost of Mandatory Restitution

Requiring restitution from every defendant in every federal criminal case without consideration of a defendant's ability to pay would be a misallocation of judicial resources and taxpayer dollars, and is unlikely to result in any appreciable increase in compensation to victims of crime, a federal judge told the Senate Judiciary Committee last month.

"These proposals would significantly alter current victim restitution law and practice, replacing a flexible system, based on common sense and judicial discretion, with an inflexible, mandatory system which will be extremely expensive to implement," said Judge Maryanne Trump Barry, chair of the Committee on Criminal Law of the Judicial Conference of the United States.

Both houses of Congress are considering mandatory restitution bills. The House has passed H.R. 665, the

Victim Restitution Act of 1995. A similar bill, S. 173, the Crime Victims Restitution Act of 1995, has been reported out of the Senate Judiciary Committee. Senate leadership plans to move the bill to the floor in the near future. While not technically identical, the House and Senate bills would have substantively the same effect.

In her testimony before the Senate committee, Barry acknowledged that final decisions about crime control in society are policy decisions that must be made by Congress. She added, however, that because judges see the application of laws daily in their courtrooms, they can offer a unique perspective on such issues. Barry said that although federal judges do have a profound concern for the victims of crime, they question the value and utility of ordering restitution where the defendant has no current ability and little potential to pay.

According to Barry, if full restitution is mandatory, the court would be required to make a finding as to the dollar amount of liability of every defendant, including those defendants who can never be expected to pay. This would be a difficult and time-consuming process, which also would place great demands on judicial branch support staff. Barry noted that probation officers may be called upon to identify victims entitled to restitution and determine the amount of loss sustained by each victim. In those many cases where the defendant cannot pay restitution, the involvement of U.S. attorneys, probation officers, federal public defenders, and judges would continue for lengthy periods of time. In these times of tight budgets, it must be asked whether valuable resources should be expended trying to collect restitution from defendants who cannot pay.

In her testimony, Barry made the following observations:

- Eighty-five percent of all federal criminal defendants are indigent at their time of conviction and will never be able to make more than nominal restitution payments, regardless of the collection system in place.

- The costs associated with mandatory restitution are unjustified. Staff will be required to investigate every case in which mandatory restitution applies, even though the vast majority of criminal cases are resolved by pleas of guilty, and restitution will be based upon factors not previously litigated or disputed by the defendant. Costs are compounded by the efforts made to track and collect, and by the hearings that must be held when a defendant fails to comply or seeks to modify the order.

- The proposed legislation seems

See *Restitution* on page 12

Freeh Discusses International Issues



Federal Bureau of Investigation Director Louis J. Freeh met with members of the Judicial Conference's Committee on International Judicial Relations recently to bring them up to date on FBI initiatives around the world.

JUDICIAL MILESTONES

Appointed: Robert C. Blair, as U.S. Magistrate Judge, U.S. District Court for the District of Hawaii, October 3.

Appointed: James L. Dennis, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Fifth Circuit, October 2.

Appointed: Jonathan W. Feldman, as U.S. Magistrate Judge, U.S. District Court for the Western District of New York, November 6.

Appointed: Bert M. Goldwater, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Nevada, October 1.

Appointed: Arthur J. Gonzalez, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of New York, October 10.

Appointed: Dennis H. Inman, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Tennessee, November 14.

Appointed: Michael G. Naville, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Indiana, November 23.

Appointed: Cheryl L. Pollak, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of New York, November 1.

Elevated: Judge James K. Singelton, to Chief Judge, U.S. District Court for the District of Alaska, succeeding Chief Judge H. Russel Holland, December 1.

Senior Status: Judge James H. Michael Jr., U.S. District Court for the Western District of Virginia, October 31.

Senior Status: Judge Helen W. Nies, U.S. Court of Appeals for the Federal Circuit, November 1.

Senior Status: Judge Matthew J. Perry Jr., U.S. District Court for the District of South Carolina, October 1.

Senior Status: John S. Rhoades Sr., U.S. District Court for the Southern District of California, November 4.

Senior Status: Judge Lyle E. Strom, U.S. District Court for the District of Nebraska, November 2.

Senior Status: Judge Thomas A. Wiseman Jr., U.S. District Court for the Middle District of Tennessee, November 3.

Retired: Magistrate Judge John A. Cody Jr., U.S. District Court for the Southern District of Indiana, November 22.

Retired: Magistrate Judge Alexander H. McGlinchey, U.S. District Court for the Northern District of Texas, October 31.

Retired: Magistrate Judge Joe Alexander Tilson, U.S. District Court for the Eastern District of Tennessee, November 13.

Retired: Magistrate Judge Daniel Scanlon Jr., U.S. District Court for the Northern District of New York, September 30.

Resigned: Magistrate Judge Kenneth R. Fisher, U.S. District Court for the Western District of New York, June 12.

Deceased: Senior Judge Robert H. Hall, U.S. District Court for the Northern District of Georgia, October 14.

Deceased: Senior Judge Thomas F. Murphy, U.S. District Court for the Southern District of New York, October 26.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of December 1, 1995

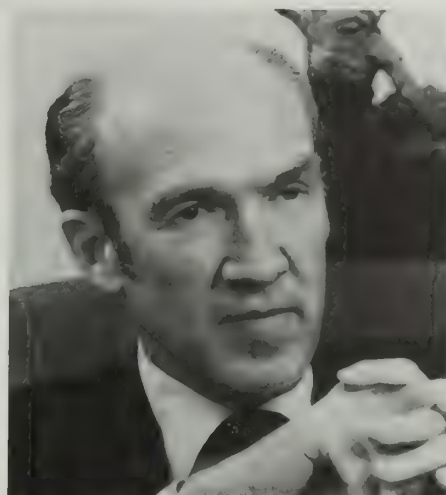
Courts of Appeals	
Vacancies	13
Nominees	6
District Courts	
Vacancies	50
Nominees	27
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	19

Three Congressional Leaders Add Their Names to Retirement List



Senator Mark O. Hatfield

The number of key members of Congress announcing their retirement continues to climb. Most recently, two senators and one representative who have worked on legislation of interest to the Judiciary have announced that they will not seek reelection in 1996. They are Senators Mark O. Hatfield (R-OR), Alan K. Simpson (R-WY), and Representative Patricia Schroeder (D-CO). Hatfield, chairman of the Senate Appropriation Committee and a member of the Subcommittee on Commerce, Justice, State and the Judiciary since 1975, was honored by



Senator Alan K. Simpson

the Judicial Conference at its September 1995 session. The Conference adopted a resolution recognizing Hatfield, stating, "He has zealously displayed his steadfast faith in the judicial process . . ."

Simpson, first elected to the Senate in 1978, has spent much of his legislative career working for immigration reform, forming an alliance with Democratic Senator Edward M. Kennedy (D-MA) and former Democratic Representative Roman Mazzoli (D-KY). Chairman of the Senate Judiciary Subcommittee on Youth Violence, Simpson served as



Representative Patricia Schroeder

his party's whip, the number two leadership position in the Senate, until being defeated by Senator Trent Lott (R-MS) this year.

Schroeder became the ranking member of the House Judiciary Committee's Subcommittee on Courts and Intellectual Property at the beginning of the 104th Congress. The longest-serving woman in the House and a Harvard Law School classmate of Attorney General Janet Reno, Schroeder dedicated much of her time to issues relating to national security and defense. She was first elected to the House in 1972.

Number of Federal Weapons Offenses Climbs

Federal weapons investigations, prosecutions, and convictions have increased substantially, according to Department of Justice study that looked at people arrested for weapons offenses during 1993. Only 4 percent of all weapons convictions were in federal courts. However, between 1980 and 1992 the number of federal weapons offenses investigated increased four-fold, and the number prosecuted increased five-fold. Between 1985 and 1992, the

number of federal weapons offenders imprisoned increased 240 percent, about four times as fast as the number of drug offenders, which increased just over 60 percent.

When a weapons offender enters federal prison, he or she likely will do so with a longer sentence than a weapons offender in a state prison. In 1990, the sentence length for federal and state weapons offenses was nearly the same, differing by only a month or two. But by 1992, the sen-

tence length for weapons offenders in state prisons dropped to 45 months, while the federal sentence rose to 77 months.

Weapons offenses include the illegal possession, use, trafficking, carrying, manufacturing, importing or exporting of deadly devices, such as guns, ammunition, silencers, explosives, and some types of knives.

Judge John F. Nangle: Complex, Related Cases Benefit from Centralization

Judge John F. Nangle was appointed to the U.S. District Court of the Eastern District of Missouri in 1973, taking senior status in 1990. He was named chairman of the Judicial Panel on Multidistrict Litigation in 1990.

Q: Can you give some historical background on why the Judicial Panel on Multidistrict Litigation was formed?

A: The Judicial Panel on Multidistrict Litigation was created by legislation in 1968 in response to the Judiciary's earlier struggle with coordinating almost 2,000 related cases pending in 36 districts around the country (containing over 25,000 claims) alleging a nationwide antitrust conspiracy among electrical equipment manufacturers. A national consensus evolved that the Judicial Panel on Multidistrict Litigation was needed to streamline adjudication of related complex cases filed in multiple districts.

Q: The Federal Rules of Civil Procedure call for "the just, speedy, and inexpensive determination" of federal litigation. How does the panel accomplish this?

A: Proper use of the panel's power to centralize cases before one judge is one of the Judiciary's best procedures for "the just, speedy and inexpensive determination" of federal litigation. Such centralization eliminates duplication of discovery; avoids inconsistent pretrial rulings; conserves the resources of the parties, their counsel and the Judiciary; and thereby expedites the entire proceeding.

Motions for centralization of cases are brought by any party or may be brought sua sponte by the panel (as was done in the asbestos cases). Under the panel rules, the parties fully brief the case and, thereafter, the panel holds bi-monthly oral hearings in different locations around the country in recognition of the national nature of this type of litigation. A "docket" can consist of as few as two or three cases or as many as thousands of cases, as in the asbestos and the breast implant cases. An average of 15 to 20 dockets are handled at a panel hearing.

Upon determining that the cases in a particular docket involve common questions of fact and that the transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation, the panel will then order the transfer of multiple litigation to a single district for coordinated or consolidated pretrial proceedings. In such cases, the savings in time and money to the parties and the courts are enormous.

A little recognized advantage of multidistrict litigation (MDL) involvement is that the panel has, through experience, developed a very solid corps of judges who are highly skilled in handling special types of litigation. An example of this is Judge Milton Pollack of New York, a former member of the panel, who handled the very involved and highly technical Drexel Burnham/Milken securities matters and brought them to a speedy conclusion. Perhaps, the major advantage arising from cases being centralized under the MDL is the fact that, as a practical matter, most

cases are disposed of by the transferee court through transfer under Section 1404 (forum non conveniens) by settlement or by other final disposition.

Q: Seven judges serve on the panel. Are all their duties the same? Do they sit individually or as a panel? With their appointment to the panel do the judges continue to carry a full caseload in the home court?

A: The panel consists of seven judges presided over by the chairman. The duties of each panel member are the same with respect to deciding cases. The chairman of the panel has additional responsibilities since he is responsible for the oversight of the panel's office, its staff of 20 employees, and its budget. Also the chairman usually handles any necessary contacts with the transferee district.

Fortunately, the MDL panel has an outstanding staff headed by its excellent executive attorney, Bob Cahn, and its dedicated clerk of court, Patricia Howard. Its office is in the Thurgood Marshall Federal Judiciary Building in Washington, D.C.

Despite the fact that most members of the panel are senior judges, all members work full time as judges. Many carry a full load in their home districts, and some others of us do court work in several districts and sit on courts of appeal.

Q: In 1994, the panel acted on 12,886 civil actions. What types of cases are transferred by the panel? What types are not transferred?



A: Typical types of cases transferred by the panel include antitrust, securities, air disasters, toxic waste disasters, products liability, patent, copyright, trademark, employment practices, and contracts. Recent examples are the hip and breast implants products liability litigations, the ASDAQ antitrust and the Keating securities dockets, and last year's plane crashes near Pittsburgh, Pennsylvania, and Charlotte, North Carolina. We are currently considering centralization of antitrust litigation in various aspects of the corn products industry. The panel is more likely to decline transfer in prisoner disputes, cases involving predominately different or relatively simple questions of fact, cases that are nearing completion, and dockets involving few cases.

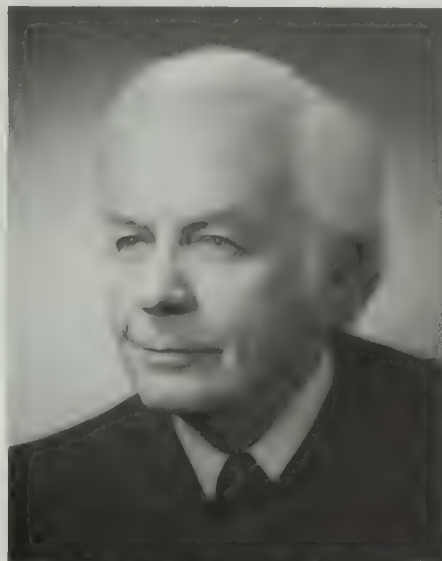
Q: Has the increased complexity of federal litigation and rise in large scale disasters had impact on the panel's work?

A: Yes, such matters consume a substantial portion of the panel's time and have placed the panel itself on the cutting edge of developing procedures for handling complex litigation and large scale disasters. Cases of this sort frequently present hotly contested turf battles among lawyers and require detailed studies by the panel to determine which district and which judge should act as the transferee court in such cases.

Q: Multiparty, multiforum legislation that would allow consolidation of mass torts has been introduced in past congresses. Does the panel have an interest in such legislation, and if so, what would the legislation accomplish?

A: The panel, along with the Judicial Conference, has long

supported a Multiparty Multiforum Act. Stated briefly, such a statute would grant federal district courts (and the MDL panel) jurisdiction in any civil case involving minimal diversity and arising from a single accident (i.e., an airplane crash, a hotel



Judge John F. Nangle

fire, etc.) in which at least 25 people are killed or injured. This legislation has long had bipartisan support in Congress and has unanimously passed the House in the past. However, it became bogged down in joint conference and died. I honestly do not know why! It seems clear to me that all parties involved in a serious single event disaster would want to have one judge guiding the case for all the reasons apparent to anyone experienced in litigation.


Under the multiparty, multiforum legislation, the MDL panel is authorized to centralize before one judge all suits arising from a single accident—including state court cases removed to federal district courts pursuant to more permissive removal provisions—not only for resolution of pretrial matters, as provided under current law, but also for determination of liability and assessment of punitive damages, where applicable. The trans-

feree court would then return the actions to the courts where they were originally filed for compensatory damages assessment.

I fully expect that legislation will be enacted in the next five to ten years, which will greatly expand the power of the MDL panel (or some similar court or panel) for consolidating and centralizing multiparty, multiforum litigation, especially when it arises from a single accident or event. I believe that the public will demand such action as the best way to reduce transaction costs in this growing field of mass tort litigation.

Q: Is there anything else you think readers would like to know about the panel's work?

A: I am always surprised when I discover how little many of our district judges know about the purpose and workings of the MDL panel. For example, many judges do not realize that the mere pendency of a motion or of an order to show cause before the panel in no way limits the jurisdiction of the court in which an action is pending. Nor does such pendency before the panel "affect or suspend orders and pretrial proceedings" in that court. All discovery in progress and all orders of the transferor court remain in effect after transfer unless and until modified by the transferee judge who may modify, expand, or vacate prior orders of the transferor court. Once the panel enters an order of transfer, of course, then the transferor court loses all jurisdiction over the case until further order of the MDL panel.

Any judge involved in MDL cases should feel free to call our staff in the Washington, D.C., office for any appropriate guidance he or she may want concerning MDL procedures. 

Restitution continued from page 7
to contemplate that restitution payment schedules may stretch long into the future, including the time period after the defendant is no longer within the criminal jurisdiction of the court. The victim or defendant may petition the court at any time without limit or finality, to modify a restitution order in view of the economic conditions of the defendant. This provision would be tantamount to transforming the federal courts into a collection agency.

■ Mandatory restitution is a form of mandatory sentencing that results in unenforceable orders and erosion of respect for the judicial process. The Judicial Conference consistently has expressed concern with mandatory restitution because imposition of restitution without consideration of ability to pay would make such orders unenforceable. The imposition of unenforceable sentences breeds contempt for the justice system.

In the instance where a defendant is indigent at the time of the sentenc-



Judge Maryanne Trump Barry appeared before the Senate Judiciary Committee last month.

ing but later experiences a financial windfall such as an inheritance, Barry urged the committee to study possible alternative mechanisms to remedy this one specific situation. "The federal Judiciary shares your concerns for the victims of crime and certainly does not oppose the goal of increasing the level of restitution to the victims of federal crimes," Barry told the Senate Judiciary Committee.

"We believe, however, that the key to the increased recovery of restitution lies not in across-the-board mandatory restitution orders, but in carefully crafted orders that take into account the loss of the victim and the realistic possibilities for recovery. If flaws in the current provisions are identified, we stand ready to assist in making whatever improvements may be necessary."

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Chief Justice Recaps 1995 in Year-end Report



INTRODUCTION

This year marks my tenth occasion as Chief Justice to issue an annual report on the federal judiciary. Since Chief Justice Warren began the tradition, this

year-end report has served as a valuable way to speak to Congress, the Executive branch, the Judiciary itself, and the public at large. Over the years I have noticed how some

See Report on page 2

Judiciary Secures FY 96 Funding

The Chief Justice, the chairman of the Executive Committee of the Judicial Conference, the Director of the Administrative Office, and countless others spearheaded an extraordinary effort that resulted in the Judiciary being singled out by Congress to receive funding for the entire 1996 fiscal year.

AO Director L. Ralph Mecham called the achievement a "near miracle" and "perhaps the greatest legislative achievement" in his tenure at the AO. While many other parts of the federal government continue to operate on reduced and temporary funding, the Judiciary is funded through September 30, 1996, at the level previously agreed to by House and Senate conferees.

"The Chief Justice urged Congress and the President to recognize the fiscal needs of the Judiciary and Chief Judge Gil Merritt [chair of the Executive Committee] went public and pointed out the dire consequences of the failure to do so," said Mecham. "Energized by the leaders of our branch, my staff and I pulled out all the stops."

As a result, the Judiciary has received an FY 96 continuing resolution that is a 5.1 percent over the FY 95 level. The FY 96 spending

See Funding on page 10

SIDE	Senate Hearing Held on Bankruptcy Judgeships	9
	New Automation Chief Selected	11
	Bankruptcy Filings Increase in FY 95	12

Report continued from page 1

issues reappear while others mark a new direction or watershed. This year we have seen both the return of old issues and the emergence of new ones.

The Third Branch has long stood as a powerful example of the way in which a properly functioning legal institution in a democracy can work—when there are three separate, independent, co-equal, interactive branches of government. It is a separateness that, as James Madison noted, is “essential to the preservation of liberty,” and as Montesquieu stressed, is required, because “there is no liberty if the power of judging be not separated from the legislative and executive powers.”

Last year I highlighted the relationship between the federal judiciary and Congress and this year I return to this theme. The past year's events make this an easy choice for a leitmotif again. Our nation's Founders ensured judicial independence through constitutional provisions that grant federal judges life tenure during good behavior

and protect members of the federal judiciary from reductions in compensation. But the drafters of the Constitution also were careful to secure an equally important interdependence and interaction among the branches.

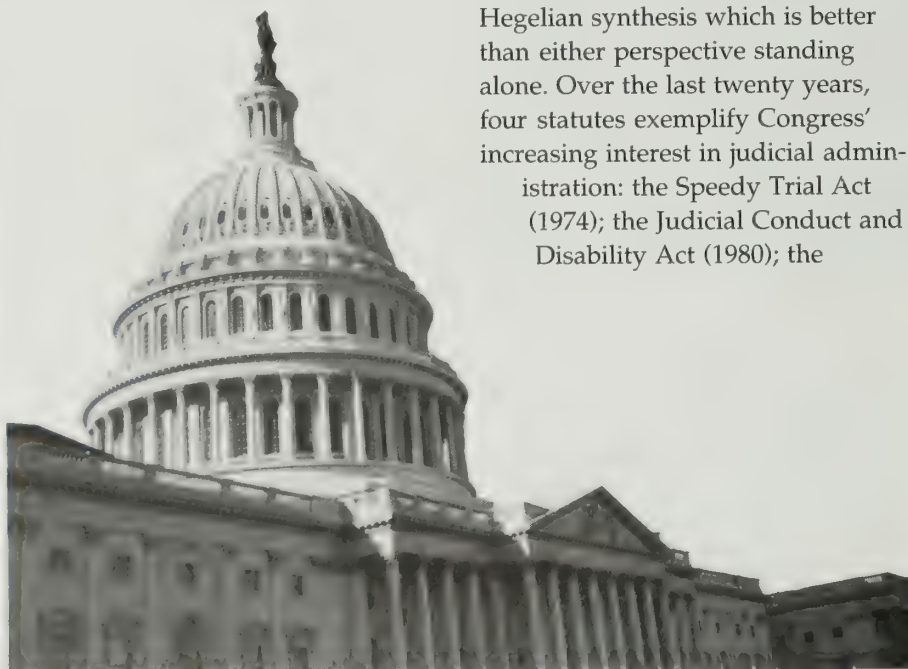
The Constitution places the independent judiciary it creates within a democratic government that is ultimately accountable to the people. One of the challenges of American government is to preserve the legitimate independence of the judicial function while recognizing the role Congress must play in determining how the judiciary functions.

The Constitution gives Congress authority to determine the size, jurisdiction, and structure of the judicial branch, the level at which it will be funded, and, within limits, the basic procedural rules the courts apply. Congress, though, has historically recognized that close consultation with the judiciary is a vital ingredient to ensure appropriate exercise of these responsibilities. Naturally, Congress and the courts view these matters from different perspectives, but those differences, as often as not, result in a sort of Hegelian synthesis which is better than either perspective standing alone. Over the last twenty years, four statutes exemplify Congress' increasing interest in judicial administration: the Speedy Trial Act (1974); the Judicial Conduct and Disability Act (1980); the

Sentencing Reform Act (1984); and the Civil Justice Reform Act (1990). Some have criticized Congress for becoming involved in these areas; others view the legislation as an appropriate exercise in oversight.

At present there are two issues of concern to the judiciary which illustrate this often creative tension between Congress and the courts. The first is the current governmental “shutdown” because of the inability of Congress and the President to agree on appropriation bills. It would be a mistake to regard this dispute as some sort of Washington based turf battle. Important questions of policy are involved, and since Congress and the President are both part of the law-making process it is understandable why each maneuvers to have its own view prevail.

But the judiciary is not part of the law-making process, and nothing in the judiciary's budget involves any dispute of principle between Congress and the President. Because of this, I have requested both the House and the Senate to separate the judiciary's budget from the comprehensive appropriation for Commerce, Justice, State, and the Judiciary, of which it is traditionally a part. There is simply no reason for depriving the public of any part of the function which the judicial branch performs because of dispute between the executive and



Front page photos, clockwise from the top left: (L to R) Speaker of the House Newt Gingrich (R-GA) met with AO Director L. Ralph Meham earlier this year; Chief Justice William H. Rehnquist; (L to R) Attorney General Janet Reno met with members of the Judicial Conference Executive Committee, including the chair, Chief Judge S. Gilbert Merritt (6th Circuit) and (L to R) Judge Maryanne Trump Barr (D. N.J.), chair of the Judicial Conference Committee on Criminal Law, discussed Judiciary matters with Senator Orrin Hatch (R-UT).

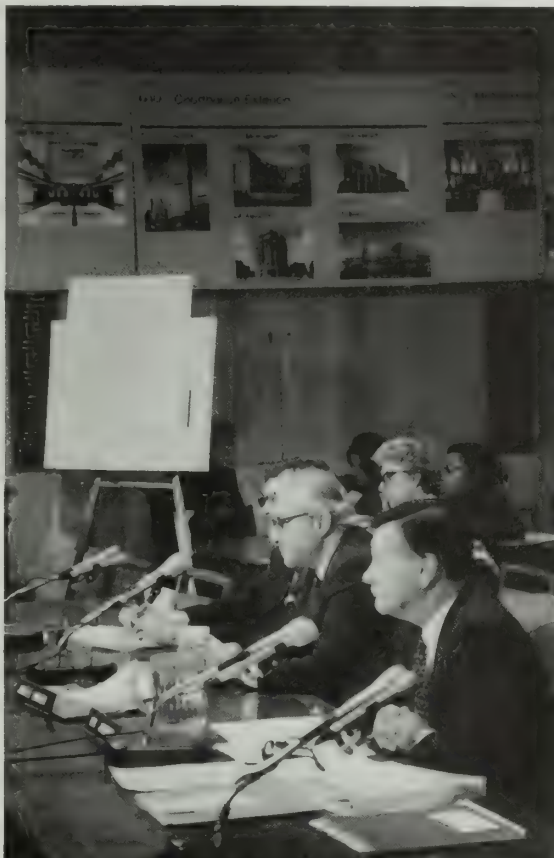
legislative branches with respect to other agencies included in the larger appropriation bill.

The second issue arises because of the plan of Senator Charles Grassley, chairman of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, to send questionnaires to all judges asking about the amount of time they devote to judicial and administrative tasks. There can be no doubt that answers to some form of such questions could aid Congress in making decisions about judicial salaries, permitted outside income from teaching, creating new judgeships, and filling existing vacancies. There can also be no doubt that the subject matter of the questions and the detail required for answering them could amount to unwarranted and ill-considered effort to micro-manage the work of the federal judiciary. We must hope that the Committee's inquiries are designed to obtain information which is the legitimate prerogative of Congress without trenching on judicial independence.

During my ten-year tenure as Chief Justice, I have seen the continuing cultivation of a positive relationship. Congress has consistently balanced economic, practical, political, and constitutional considerations. Since its inception, Congress has cooperated with the Judicial Conference of the United States, the judiciary's policy-making body, and the Administrative Office of the United States Courts. Congress has also benefited from the research of the Federal Judicial Center in a variety of policy areas. The forging of an effective working relationship with Congress has occurred when the federal bench simultaneously has maintained its independence and impartiality while participating in a

suitable manner. As an example, from 1985 to 1995, the total judiciary budget has grown by 180% due to the support of Congress.

Examples of accountability include the recent General Account-



(L to R) Judge Robert E. Cowen (3d Cir.) and GSA Administrator Roger Johnson testify on courthouse construction before the Senate Committee on Governmental Affairs' Subcommittee on Oversight of Government Management and the District of Columbia.

ing Office Report on the federal judiciary. The Report, among other things, reviews the relationship between the Administrative Office and the Federal Judicial Center. It reaches positive conclusions about the continued independence of the Administrative Office and the Federal Judicial Center, concluding that there is little or no duplication of work between the two agencies, and thus no cost savings to be had in merging them. This type of inquiry is entirely legitimate, appropriate, and I hope it will continue to be

used in a responsible fashion. I am confident that such examination will not only reveal the value of the work of agencies such as the Federal Judicial Center and the Administrative Office, but will reinforce the continued need for independence and strong financial support from Congress.

Other old pressures have resurfaced. In one of Chief Justice Burger's last year-end reports he drew attention to the critical problem posed by inflation shrinking judges' compensation. Although a Quadrennial Commission on Executive, Legislative and Judicial Salaries had been established to address the problem of compensation, its recommendations have fallen victim to political pressures. The problem then, continues to be a problem now; unless a solution is found to deal adequately with the issue of judicial salary erosion, it will be difficult to attract outstanding lawyers to the bench and retain them.

To resolve this type of financial strain in the face of dwindling resources requires cooperation. Similarly, I think it is important that appropriate representatives of the Congress and the judiciary sit down together to discuss and evaluate other current challenges facing the legal system. Renewed cooperation such as the upcoming Three Branch Conference, where we can gather in small groups to focus on specific issues, is a welcome forum.

A recent example of how the process of cooperation should work involved the discussion of courthouse construction. Over the last few decades, the judiciary began to outgrow the courthouses built primarily in the 1930's. This is a

See Report on page 4

Report continued from page 3
complicated process, involving the judiciary, which has a need for space, the General Services Administration, which has a large and complicated building program to manage, and Congress, whose members are interested in ensuring that the courts

in their home states are properly served and that their constituents share in the economic benefits of construction. In response to criticisms, the judiciary prioritized its needs using objective criteria such as the amount previously expended, the need for courtrooms, security

valuable document that offers a framework for the interests of the federal judiciary, and provides a road map for serious study from which the other branches could certainly benefit. As underscored by the plan, the courts, both federal and state, require adequate resources to accommodate the impact of new legislation.

A continuing emerging issue raised by the *Long Range Plan* is caseload growth. All judges, lawyers, and even many casual observers of the judicial system, are aware of the increase in filings in the various federal courts of appeals. There are several different ways to try to solve this problem. One is to expand the number of judges who hear appeals—either by increasing the number of judges on each circuit, or creating some hybrid court between the present trial courts and courts of appeals. Another approach is to begin limiting the appeal as of right from the trial court to the court of appeals further than it is already limited. Others have advocated splitting circuits, or a unified court of appeals. As is to be expected, each solution has generated debate. The Judicial Conference is strongly opposed to unlimited expansion of the federal judiciary, because an appellate court that is too large often becomes unwieldy, and may have difficulty maintaining consistency of precedent. Carefully controlled growth is required in this area. Whether, or how, to attempt to circumscribe the appeal as of right is a matter for debate and one which I hope will be the source of study and robust discussion.

THE YEAR IN REVIEW

The Federal Courts' Caseload

The most significant factor in the Federal Courts' caseload in 1995 is that filings increased in the 12



"One of the challenges of American government is to preserve the legitimate independence of the judicial function while recognizing the role Congress must play in determining how the judiciary functions."

risks, leasing pressures and the number of years of occupancy strain.

Such examples of cooperative relations whereby the judiciary sets its own priorities in order to aid the Congress in dispensing scarce resources is why I have supported the process of long-range planning. I am hopeful that Congress will give serious study and consideration to the *Long Range Plan for the Federal Courts*, which the Judicial Conference is currently in the process of approving. This plan was developed to help guide future administrative action and policy development by the Conference and other judicial branch authorities. Among its commentary are a number of sections relating specifically to Congress' oversight role and the continuing interaction of, and communication among, the three branches. While I do not expect every part of this plan to become national policy, I believe it is a

regional courts of appeals, the district courts, and the bankruptcy courts. Overall, district court filings climbed 4 percent as civil filings increased from 236,400 to 248,300, a 5 percent increase. This rise in civil filings resulted mostly from increases in private cases involving federal question litigation. Federal question litigation rose 13 percent, primarily due to personal injury product liability cases which nearly doubled. This sizeable increase was due to breast implant cases which were removed from state to federal courts following the bankruptcy of Dow Corning. Other areas of federal question litigation that increased were civil rights filings which rose 13 percent and prisoner petitions which rose 9 percent. In contrast, diversity of citizenship cases declined 6 percent, mostly as a result of a 30 percent drop in personal injury/product liability cases. Cases involving the U.S. government as plaintiff or defendant dropped 5

cent, primarily as a result of decreases in cases brought by the U.S. government to recover on defaulted student loans (down 13 percent) and overpayment of veterans' benefits (down 62 percent). Criminal filings remained stable in 1995, rising from 45,500 to 45,800, an increase of approximately 1 percent. The overall increase in criminal filings would have been greater but drunk driving and traffic violations, especially misdemeanors, fell 26 percent. Drug filings were stable, rising only 1 percent and remained at 10 percent of all criminal case filings. Immigration offenses were 53 percent higher in 1995, and weapons and firearms filings rose 16 percent. Federal bankruptcy court filings increased filings increased most 6 percent in the U.S. bankruptcy courts, rising from 838,000 to 880,000. This was primarily due to increases in Chapter 7 and 13 cases. Chapter 7 filings, which account for 68 percent of all bankruptcy filings, rose 5 percent and Chapter 13 filings, which account for 31 percent of all bankruptcy filings, rose 9 percent. Filings of Chapters 11 and 12 continued to drop at 21 and 5 percent, respectively. Filings after declining 4 percent in 1994,

the number of appeals filed in the 12 regional courts of appeals rose in 1995 by almost 4 percent, reaching 1993's all-time high of 50,000 cases. Prior to last year's decline, appeals filings had increased every year since 1978. Original proceedings, bankruptcy and civil appeals all experienced increases in filings, up 27, 21 and 6 percent, respectively. Criminal appeals declined 5 percent, with drug-related appeals experiencing the most notable drop.

External forces, such as legislation and changes in the economy, have the potential to exert a substantial influence on the judiciary's caseload. The 104th Congress has been extremely active on many issues of critical importance to the judiciary. Passing legislation in any of these areas has the potential to affect the caseload of the federal courts in ways that may be significant, but are currently hard to gauge. Developments in the economy, such as the current increase in private debt, will likely have an impact on future trends in bankruptcy filings.

The number of judicial vacancies is another factor which has and will greatly affect the workload of the courts. As was the case last year, the pace of nominations and confirma-

tions in 1995 has been high and represents a significant achievement in keeping the number of judicial vacancies low, although the Senate process slowed in late October. During the First Session of the 104th Congress, President Clinton nominated 86 persons for Article III judgeships. At this time fifty-four of these nominees have been confirmed by the Senate. Thirty nominations are either pending before the Senate Judiciary Committee or awaiting floor action.

The Supreme Court of the United States

In Memoriam

On June 25, 1995, the death of Chief Justice Warren Burger brought to an end a memorable judicial career. Chief Justice Burger presided over the Supreme Court for seventeen years, authoring important opinions, lending his leadership to questions of law and judicial policy, and playing an important part in the creation of various institutions such as the National Center for State Courts, the Institute for Court Management, and the state-federal judicial councils. He worked tirelessly to improve the agencies of judicial administration, broaden their programs, and implement policies such as the drafting of the standards of criminal justice for the American Bar Association. All these efforts contributed mightily to the improved functioning of the judiciary.

Caseload Statistics

The total number of case filings in the Supreme Court again increased, although less dramatically than in the previous Term, and the number of cases heard and decided on the merits declined. During the 1994 Term, case filings totalled 6,996, up from 6,897 the previous

See Report on page 6



Chief Justice Warren Burger lay in repose in the Supreme Court's Great Hall in June

Report continued from page 5
Term, a 1.4 percent increase. Filings in the Court's *in forma pauperis* docket also increased slightly—up 1.3 percent, from 4,796 to 4,858. The Court's paid docket experienced a jump of 38 cases from the previous Term, reaching 2,138. It was an increase identical to that from the 1993 Term. The Court decided 94 cases in the 1994 Term, compared to 99 the previous Term. Signed opinions accompanied 82 of the decisions, a drop of two from the 1993 Term. Again last Term, there were no cases set for reargument.

The Administrative Office of the United States Courts

The Administrative Office, established in 1939, enables the judiciary to conduct its own affairs and carry out its responsibilities for the proper administration of justice. Among its responsibilities, the Judicial Conference of the United States is charged with surveying the condition of business in the courts and making recommendations to promote uniformity of management procedures and expeditious conduct of court business. With assistance from its standing committees, the Judicial Conference oversees the programs and operations of the judiciary.

The Director of the Administrative Office is supervised by the Judicial Conference of the United States, and the Administrative Office provides the principal staff work that enables the Conference to carry out its policymaking and oversight functions. The Administrative Office plays a pivotal role in federal court administration, and the breadth of the agency's functions is evidenced by a solid record of

accomplishments, *e.g.* monitoring judiciary operations and programs, collecting and analyzing data, allocating resources, conducting studies and evaluations, identifying opportunities for cost reductions and efficiencies, designing new systems, providing technical assistance and advice to the courts, monitoring legislative proposals that



(L to R) The Judicial Conference honored AO Director L. Ralph Mecham with a resolution on the occasion of his tenth anniversary at the AO. AO Associate Director Clarence A. Lee, Jr. presented Mecham with a framed copy of the resolution.

would affect the judiciary, and fostering communications with the other branches of government and the public.

The judicial councils of the circuits, also created in 1939, are granted authority to make all necessary and appropriate orders for the effective and expeditious administration of justice within their circuits, and the judicial councils, among other things, consider allegations of judicial misconduct or disability under 28 U.S.C. § 372(c). The courts themselves have substantial responsibility for their own administration, and each individual judge is responsible for the management of his or her cases. These complementary elements of the judiciary's uniquely effective

governance structure support the fundamental principle of judicial independence.

The Administrative Office continues to do an admirable job of providing leadership and support to the federal courts despite severe budget constraints. While the courts workload and staff have expanded, so has the demand for services from

the Administrative Office. The budget increases for the Administrative Office have not kept pace with the greater expansion of the judiciary; this imbalance has intensified in recent years. The agency's appropriation has grown only 6 percent since 1992—not nearly enough even to cover inflation—while the courts' budget increased 22 percent. The outlook for 1996 and beyond does not promise financial relief. Of particular note among the many achievements this year, the Administrative Office: conducted

Economy Subcommittee-

sponsored studies to control costs; assisted in the completion of the *Long Range Plan for the Federal Courts*; coordinated the judiciary's communications with the 104th Congress on legislation and appropriation matters affecting the federal courts; expanded the new Court Personnel System and the Cost Control Monitoring System; began conducting program administration reviews of federal defender organizations; installed the Data Communications Network at 83 court sites; assumed direct responsibility for the automation training and support centers in Arizona and Texas and for the Central Violations Bureau; sponsored a Summit on Supervision of Offenders; promulgated new quality standards for pretrial

26-27 Friday-Saturday
Committee on the Budget

29-31 Monday-Wednesday
Workshop for Judges of the Ninth Circuit

JANUARY

FEBRUARY

12-16 Monday-Friday
Video Orientation for Newly Appointed District Judges

15-16 Thursday-Friday
Executive Committee

BANKRUPTCY JUDGESHIP, Western District of Tennessee

Bankruptcy Judge position available in Memphis, Tennessee. Appointment is for 14-year term. Salary: \$122,912. Full public notice with qualification standards is posted in the offices of the United States Court of Appeals for the Sixth Circuit, and U.S. District and Bankruptcy Courts for the Western District of Tennessee. For further information and application forms, contact Office of the Circuit Executive, U.S. Court of Appeals for the Sixth Circuit, 503 Potter Stewart United States Courthouse, Cincinnati, Ohio 45202-3988. Phone: (513) 684-3161. Deadline for receipt of applications is March 1, 1996.

BANKRUPTCY JUDGESHIP, Eastern District of New York

Applications are being accepted for a bankruptcy judgeship position located in Brooklyn, New York. Applicants must (1) be a member in good standing of the bar of the highest court of a state; (2) possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience; (3) have the ability to deal with complex legal problems; and (4) have aptitude for legal scholarship and writing, and familiarity with courts and judicial process. Appointment is for a 14-year term. Salary: \$122,912. For further information and applications, contact Steven Flanders, Circuit Executive, 2904 U.S. Courthouse, Foley Square, New York, NY 10007. Applications should be submitted by February 29, 1996.

CLERK OF COURT, Northern District of Illinois

This metropolitan court headquartered in Chicago with a divisional office in Rockford seeks an experienced administrator for the position of Clerk of Court. By local rules, the Clerk serves as the court administrator. The appointee is responsible for administrative management of nonjudicial functions of the court. Applicants must have a minimum of 10 years of management experience of increasing responsibility. Substantial experience in personnel and budget management is required. Experience in federal judicial administration is desirable but not mandatory. Applicants must have an undergraduate degree. A professional degree in law, business administration, or public administration is desirable. Salary: \$97,848-\$115,687. An original and five copies of the cover letter and resume must be sent to H. Stuart Cunningham, P.O. Box A3595, Chicago, IL 60690. Closing date for applications is January 31, 1996.

EQUAL OPPORTUNITY EMPLOYERS



Judge Rya Zobel, FJC Director

services, petty offense presentence investigation, and post-sentence investigation reports; developed information for the judicial councils of the circuits on bankruptcy appellate panels; issued standards for the conduct of court reviews; improved automated statistical reporting; and took numerous steps to reduce the judiciary's space costs.

1995 marked the tenth anniversary of L. Ralph Mecham's tenure as Director of the Administrative Office, and I join many others throughout the judicial branch in recognizing this milestone service and leadership.

The Federal Judicial Center

In March, Judge William J. Bryant concluded five years of leadership of the Center when he reached the mandatory retirement age for the Center's Director. During his stewardship the Center added to its reputation as a nationally recognized research institution whose studies were marked by excellence. We have every expectation that Judge Rya Zobel, of the United States District Court for the District of Massachusetts, as the Center's seventh director, will not only continue this tradition, but enhance

In an ever more challenging

environment, the Federal Judicial Center continues to carry out its statutory mandate—to educate and train judges and court staff, conduct research concerning the operation of the courts and assist the Judicial Conference and its committees with analysis and evaluation of court procedures.

In 1995, the Center provided orientation seminars for almost 200 federal judges and continuing judicial education programs to about 2,500 judges. The topics ranged in variety from the intricacies of DNA, to the changing law of sentencing, to the use of alternative procedures for resolving litigation. The Center responded to an imminent increase in the number of trials under federal death penalty legislation by offering trial judges advice and assistance, began a project to help federal courts manage the growing number of cases filed by prisoners and others without lawyers, and published manuals to help judges try complex cases, often with scientific evidence.

Center educational programs reached nearly 20,000 supporting staff of the federal courts system including probation and pretrial

services officers, employees of the clerks' offices, and others. These programs reveal the mix of administrative and management issues facing the federal judicial system, such as instructing probation officers on the supervision of mentally ill or addicted offenders, stressing the importance of customer service in dealing with litigants, lawyers, and the public, and teaching the importance of security and safety.

Because of the Center's growing reliance on alternative educational methods, four out of every five court support staff who participate in Center education do so in programs held at the work site, saving travel dollars. Center video programs are major instruments for orientation of new judges and court personnel. Interactive instructional programs let deputy clerks learn about federal procedural rules on their desk top computers. On-line computer conferences instruct judges and staff on how to be better managers, and let them exchange experiences with colleagues across the country without leaving their offices.

The judiciary, the bar, and the Congress are reassessing many

See Report on page 8



The newest members of the U.S. Sentencing Commission gathered at the Supreme Court following their swearing-in ceremony. They are (L to R) Wayne Anthony Budd; the chairman, Judge Richard P. Conaboy (M.D. Pa.); Judge Deanell R. Tacha (10th Cir.); and Michael Goldsmith.

Report continued from page 7

of the procedural rules that determine how federal courts operate. In 1995, Center analyses informed the committees of the Judicial Conference and relevant congressional committees of the actual operations of rules governing imposition of attorney sanctions, class actions, pretrial discovery, jury selection, and fee shifting.

The Center will be an important contributor in helping the judiciary learn to do more with less, without sacrificing quality. Independent studies will be required to evaluate the effects of new projects, demands for continuing educational programs in complex areas of the law, and Center's support for Judicial Conference Committees will increase as more becomes expected from the judiciary.

I am confident that the Center, under Judge Zobel, will be able to meet these challenges and hope that Congress will continue to support the Center with all the resources it needs.

United States Sentencing Commission

After an extended tour of eight years as chairman of the United States Sentencing Commission, Judge William W. Wilkins, Jr., from the United States Court of Appeals for the Fourth Circuit, was replaced by Richard P. Conaboy, a district court judge from the Middle

District of Pennsylvania. Judge Wilkins should be commended for his skillful guidance of the Commission on the challenging questions and issues raised in the sentencing arena.

Day-to-day the Commission is focused on amending guidelines; writing statutorily required reports; and facilitating a working relationship with the executive, legislative and judicial branches. The guidelines have been under constant review since their enactment and last year 25 of 27 amendments submitted to Congress became effective on November 1. Judge Conaboy has promised a plan of continuity, assessment, simplification, and management review during his tenure.

Conclusion

Justice Oliver Wendell Holmes observed, albeit in dissent, that "[t]he great ordinances of the Constitution do not establish and divide fields of black and white." The subjects of current interest in which both Congress and the judiciary have a role to play illustrate the truth of his comment. No one doubts that it is Congress, and not the judiciary, which makes laws. No one doubts that it is the judiciary, and not Congress, which decides cases. But in the great gray area between these core func-

tions, there must be give and take in order to work out common sense solutions to recognized problems.

THE THIRD BRANCH

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William W. Wilkins, Jr.

Federal Judiciary Supports Legislation to Create Bankruptcy Judgeships

Despite the implementation of e processing innovations, the recent increase in bankruptcy filings necessitates the creation of 11 new bankruptcy judgeships, a representative of the federal Judiciary told a House subcommittee last month.

"The bankruptcy courts have made great strides in the efficient processing of cases," said Chief Judge Paul A. Magnuson (D.Minn.), chair of the Committee on the Administration of the Bankruptcy System of the Judicial Conference. "The courts realize that efforts in this regard must never stop. Despite our best for efficiency, the reality is that we need additional bankruptcy judges to provide for the proper administration of the bankruptcy system now."

Magnuson testified before the House Judiciary Subcommittee on Commercial and Administrative Law. Representative George Gekas (R.A.), the chair of the subcommittee, has introduced H.R. 2604, which would create five permanent bankruptcy judgeships and six temporary bankruptcy judgeships.

The Bankruptcy Judgeship Act of 1995 would establish four permanent judgeships in the Central District of California and one permanent bankruptcy judgeship in the District of Maryland. One temporary bankruptcy judgeship would be created in each of the following districts: Southern District of Florida, Eastern District of Michigan, District of New Jersey, Eastern District of New York, Southern District of New York, and Western District of Pennsylvania.

The number of bankruptcy cases increased by 8 percent during the first three quarters of FY 95, compared to the first three quarters of FY 94. All indicators suggest that this growth will continue.

The Judicial Conference has strict requirements to assess the need for



(L to R) Chief Judge Paul A. Magnuson (D. Minn.), chair of the Judicial Conference Committee on the Administration of the Bankruptcy System, Chief Bankruptcy Judge Paul Mannes (D. Md.), and Bankruptcy Judge William E. Anderson (W.D. Va.) testified before the House Judiciary Subcommittee on Commercial and Administrative Law.

additional bankruptcy judgeships, Magnuson said. A comprehensive work measurement study has been conducted and a refined case weight measuring system has been developed. Other factors, including the nature and mix of a court's caseload and geographic, economic, and demographic factors also are taken into account.

The Conference's continuous reassessment of bankruptcy judgeship needs resulted in the Conference's recent decision to reduce its previous request for 19 additional judgeships to 11 new judgeships. In addition, in an effort to reduce costs and ensure that resources do not exceed needs, the Judiciary biennially assesses the continuing need for each authorized bankruptcy judgeship. In 1994, the Judicial Conference recommended that the statutory authorization for each bankruptcy judgeship be retained, but that five judgeships remain unfilled until a need is demonstrated in those respective districts. Since then, an additional four bankruptcy judgeships have been identified as unnecessary to fill, making a total of nine vacant positions.

"The Judicial Conference has an

excellent record of fully utilizing, and conserving, the judicial resources presently authorized before requesting additional bankruptcy judgeships," Magnuson said. In 1995, a comprehensive manual was published, providing information and guidance to bankruptcy judges on case management procedures. In addition, the Judiciary manages its resources through its "recall" program, which enables retired bankruptcy judges to handle judicial assignments for fixed periods.

"We are struggling with an overburdened system," Judge Magnuson told the subcommittee. "We are not asking our bankruptcy judges to do more—we are requiring it. We will continue to seek ways to improve the bankruptcy system's efficiency, but we critically need these 11 additional bankruptcy judgeships."

Also testifying in support of the legislation was Bankruptcy Judge William E. Anderson (W.D.Va.), chair of the Legislative Committee of the National Conference of Bankruptcy Judges, and Chief Bankruptcy Judge Paul Mannes (D. Md.).

Funding continued from page 1
measure, H.R. 1358, was signed January 6, 1996, by the President as P.L. 104-91. The same bill provides funding for 17 separate programs, including the law enforcement component of the Department of Justice.

The ground work was laid on December 7 when the Chief Justice wrote to the Speaker of the House and the President of the Senate seeking enactment of a free-standing appropriation for the Judiciary. The Chief said in his letter, "Our primary goal is to ensure that the courts continue to provide our citizens the full range of judicial services that they desire and deserve."

In mid-December, most of government funded by the six appropriations bills that had not yet been enacted furloughed non-emergency employees. Recognizing the need for the federal courts to continue operations, the Executive Committee allowed the Judiciary to function through limited fee income and a small amount of carry-over funds. When these sources neared depletion earlier this month, Merritt convened a conference call of the Executive Committee and then issued a statement, saying that "a breakdown in our system of constitutional order and law enforcement could occur."

"In the end, we overcame huge odds to accomplish what we did," said Director Mecham. "Members of Congress, leaders in the Judiciary, and AO staff joined forces to achieve what at one time appeared to be an unattainable goal."


The Chief Justice put in personal phone calls to two key Senate leaders. Judges Morey Sear, Wayne Anderson, John Heyburn, Deanell Tacha, Otto Skopil, and several others contacted pivotal members of Congress. In the House, it is understood that the Speaker, Newt Gingrich, endorsed the Chief's December 7 letter. In the Senate, Majority Leader Bob Dole and Appropria-

tions Committee Chair Mark Hatfield took the lead with Senators Robert Byrd and Fritz Hollings, while in the House, Judiciary Committee Chair Henry Hyde, Appropriations Committee Chair Bob Livingston, subcommittee Chair Hal Rogers, and Congressman Bill McCollum led an effort that was joined by Representatives David Obey and Alan Mollohan in a unique bipartisan effort to meet the Judiciary's funding needs.

"My staff and I seemed to spend about 23 hours a day working every angle to free our budget. One day I logged 68 telephone calls solely to discuss this issue," Mecham said. "The AO's budget liaison officers, George Schafer and Penny Jacobs were accompanied by Mike Blommer, the assistant director for Congressional, External, and Public Affairs and his staff in their own full court press." In recognition, the Judicial Conference's AO Committee

passed a resolution expressing its sincere appreciation for the "extraordinary, vigorous, and successful efforts" of the Chief Justice, the chair of the Executive Committee, the director of the AO, and others.

In its appropriations report, House-Senate conferees instructed the Judiciary to participate in an independent nonpartisan study of judicial workload and resource utilization. They also agreed that the Judiciary should make every effort to hold down the cost of circuit judicial conferences and eliminated funding for Post Conviction Defender Organizations, but provided funds for the 20 organizations to wind down their operations by April 1, 1996.

"It has been a remarkable period," said Mecham. "I look forward to turning to all the important issues that were relegated to back burner while we addressed the budget crisis, and pray that we will not have to go through this again in FY 97." 

Judiciary Appropriations (In Thousands)

Account	FY 95 Enacted*	FY 96 Continuing Resolution
Supreme Court		
Salaries & Expenses	\$24,240	\$25,834
Building & Grounds	3,000	3,131
Federal Circuit	13,438	14,288
Court of International Trade	10,685	10,859
Courts of Appeals, District Courts and other Judicial Services:		
Salaries & Expenses	2,340,127	2,433,141
Defender Services	240,500	267,217
Fees of Jurors	54,346	59,028
Court Security	113,640	102,000
Administrative Office	47,500	47,500
Federal Judicial Center	18,828	17,914
Judiciary Trust Funds	28,475	32,900
Sentencing Commission	8,800	8,500
Crime Trust Fund	0	30,000
Total Judiciary	\$2,903,579	\$3,052,494

* Includes rescission and supplemental appropriations.

Appointed: David R. Homer, as U.S. Magistrate Judge, U.S. District Court for the Northern District of New York, December 11.

Appointed: Pat E. Morgenstern-Allen, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Ohio, December 1.

Appointed: Bernard Zimmerman, as U.S. Magistrate Judge, U.S. District Court for the Northern District of California, November 21.

Elevated: Judge Elizabeth A. Tachevich, to Chief Judge, U.S. District Court for the Middle District of Florida, succeeding Chief Judge H. Moore II, January 1.

Elevated: Judge David G. Larimer, to Chief Judge, U.S. District Court for the Western District of New York, succeeding Chief Judge Daniel A. Telesca, January 1.

Elevated: Judge James K. Singleton, to Chief Judge, U.S. District Court for the District of Alaska, succeeding Chief Judge R. Russel Holland, December 1.

Senior Status: Judge Helen J. Frye, U.S. District Court for the District of Oregon, December 10.

Senior Status: Chief Judge John H. Moore II, U.S. District Court for the Middle District of Florida, December 31.

Retired: Magistrate Judge James Toliver Davis, U.S. District Court for the Western District of North Carolina, December 28.

Retired: Magistrate Judge Frank P. Gibbs, U.S. District Court for the District of South Dakota, December 31.

Retired: Magistrate Judge J. David Orlansky, U.S. District Court for the

Northern District of Mississippi, December 30.

Resigned: Bankruptcy Judge Dale E. Ihlenfeldt, U.S. Bankruptcy Court for the Eastern District of Wisconsin, December 31.

Deceased: Senior Judge John A. Field Jr., U.S. Court of Appeals for the Fourth Circuit, December 16.

Deceased: Senior Judge Lawrence T. Lydick, U.S. District Court for the Central District of California, December 17.

Deceased: Senior Judge Homer Thornberry, U.S. Court of Appeals for the Fifth Circuit, December 12.

Deceased: Senior Judge Hubert L. Will, U.S. District Court for the Northern District of Illinois, December 9.

Pamela B. White to Head Automation and Technology Division



Pamela B. White

Pamela B. White has been named the new assistant director for the Administrative Office Automation and Technology Division. As chief of the Integrated Technology Division since 1990, she has led efforts to improve office automation and communications, including the deployment of the Data Communications Network across the country.

Before joining the AO, White was the director of the Office of Policy and Management Operations at the Department of Justice. She earned her B.A. from Cornell University and her M.B.A. from George Washington University.

JUDICIAL BOXSCORE

As of January 1, 1996

Courts of Appeals	
Vacancies	13
Nominees	7
District Courts	
Vacancies	37
Nominees	22
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	
	14

Rise in Bankruptcy Filings Registered for FY 95

For the fiscal year that ended on September 30, 1995, bankruptcy filings in federal courts increased when compared to the same 12-month period in 1994. According to statistics released by the Administrative Office, 883,457 bankruptcy cases were filed in federal bankruptcy court in FY 95 for a 5.5 percent increase over FY 1994, when 837,797 cases were filed.

In the 3-month period ended September 30, 1995, filings totaled 233,593, up from the 208,187 bankruptcy cases filed during the quarter ended September 30, 1994.

Over the last three years, year-end bankruptcy filings have fluctuated; with filings dropping to 897,231 in 1993, to 837,797 in 1994, and increasing to 883,457 in 1995. This is different from what occurred from 1988 to 1992 when bankruptcy filings in-

Quarterly Bankruptcy Filings

3-month Period Ending	Total Filings
September 30, 1995	233,593
June 30, 1995	235,302
March 31, 1995	212,626
December 31, 1994	201,618
September 30, 1994	208,187
June 30, 1994	216,213
March 31, 1994	206,565
December 31, 1993	206,570
September 30, 1993	215,498
June 30, 1993	229,406
March 31, 1993	222,694
December 31, 1992	228,562
September 30, 1992	236,810
June 30, 1992	250,622
March 31, 1992	252,733

creased rapidly, going from 604,759 cases in 1988 and reaching 977,478 cases by 1992.

Of the total number of bankruptcy cases filed in the 12-month period ending September 30, 1995, there were 598,250 Chapter 7 cases, up from the 571,971 Chapter 7 cases filed in the same period in FY 94. The next largest group of bankruptcy filings was under Chapter 13, totaling 271,650, up from the 248,942 chapter 13 cases filed in the 12-month period FY 94. Chapters 11 and 12 showed a decline in FY 95. The increase in total bankruptcy filings was the result of increased non-business or consumer filings, which more than offset a slight drop in business bankruptcy filings.

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FEDERAL DEPOSITORY

Active, Long, and Contentious First Session of Congress Closes

The *Contract with America* was the focus of intense legislative debate; the threat of a funding lapse brought federal courts to the verge of a constitutional crisis; the Alfred P. Murrah Federal Building in Oklahoma City—located a block away from the federal courthouse—was

blown-up; the Federal Courts Improvement Act was introduced; and Representatives Carlos Moorhead (R-CA) and Patricia Schroeder (D-CO), and Senators Howell Heflin (D-AL) and Mark O. Hatfield (R-OR)—key players in the debate over legislation and funding involving

the courts—announced their retirements. And that was just the first session of the 104th Congress, which began earlier than most and adjourned five minutes before the start of the second session. It is said to be among the longest in history.

According to the *Congressional Monitor*, the first session was “the busiest burst of legislative activity since President Franklin Delano Roosevelt steered his New Deal legislation through Congress in the 1930s.” In addition, the shift in the majority party, which gave the Republicans control of both houses for the first time in 40 years, resulted in a dramatic change in the leadership and agenda of congressional committees.

The following is a look back at the first session of the 104th Congress and some of the issues that are of particular interest to the federal Judiciary.

Contract with America

The first 100 days that the House was in session were consumed by the *Contract with America*. Many of the reforms called for in the contract had broad implications. Of particular interest to the Judiciary were the Fiscal Responsibility Act, the Common Sense Legal Reform Act, and a crime bill entitled the Taking Back

See *Congress* on page 2

Three Branches Continue Dialogue



(From left to right) Assistant Attorney General Walter Dellinger, U.S. Department of Justice; Representative Henry J. Hyde (R-IL); Senator Orrin Hatch (R-UT); New Mexico Attorney General Tom Udall; Judge Maryanne Trump Barry (D. N.J.); and Judge Stephen H. Anderson (10th Cir.) took part in a discussion at the Three-branch Conference held in Washington, D.C., last month. See story on page 7.

INSIDE

Judiciary Cost-cutting Measures Pay Off	5
Electronic Filings Bring Order to Busy Court	6
Conference Will Respond to Grassley Survey	12

Congress continued from page 1
Our Streets Act. The Fiscal Responsibility Act contained a provision that would give the President line-item veto authority. Chief Judge Gilbert S. Merritt (6th Cir.), chair of the Judicial Conference's Executive Committee, testified before a joint House-Senate committee in opposition to the inclusion of the Judiciary in the legislation. To do so, Merritt

mandatory minimum sentences, habeas corpus reform, mandatory restitution, and prisoner civil rights litigation.

Last November, Judge Maryanne Trump Barry (D. N.J.), chair of the Judicial Conference's Committee on Criminal Law, testified before the Senate Judiciary Committee in opposition to provisions in mandatory restitution legislation, which she

been brought to the floor. Another response to the Oklahoma City bombing was the enactment of a supplemental FY 95 appropriation, which contained \$16.6 million for court security.

A third provision in the *Contract With America*, the Common Sense Legal Reform Act, was modified and passed by the House as the Common Sense Product Liability and Legal Reform Act. The Senate has passed its own product liability legislation, but no conference has been scheduled to address the differences in the two bills.

FY 96 Funding

By spring of 1995, Chief Judge Richard Arnold (8th Cir.), chair of the Judicial Conference's Budget Committee, had presented the Judiciary's budget request to the Senate and House appropriations subcommittees. At the time, there were few hints of the coming crisis that would twice shut down major parts of government and bring the federal courts within days of suspending some operations.

During early consideration of the Judiciary's funding request, questions did arise about the Post Conviction Defender Organizations (PCDOs), which provide representation to indigent defendants in capital habeas corpus cases. In the end, Congress zeroed out the PCDOs but provided funds for them to wind down their operations by April 1. While little additional controversy existed in the Judiciary funding request, the contentious and divisive nature of business in Congress made it unlikely that an appropriations bill would be enacted by October 1, 1995.

As the federal government braced for a partial shutdown, Congress enacted an eleventh hour continuing resolution, which provided funding through mid-November. When the funding measure expired, a



(R to L) Judge Robert E. Cowen (3d Cir.) greets Senator William S. Cohen (R-ME) prior to a hearing of the Senate Governmental Affairs Committee's Subcommittee on Oversight of Government Management and the District of Columbia.

said, could threaten the ability of the Judiciary to independently discharge its constitutional duties. The House and Senate passed different line-item veto legislation and are awaiting a conference on the bills. Amendments that would have excluded the Judiciary from the line-item veto were offered and defeated on the floors of both houses.

The House began consideration of anti-crime legislation in the first week of the session, divided the primary bill into seven separate bills a week later, and passed most of them by mid-February. The Senate processed its own Violent Crime Control and Law Enforcement Act, by breaking it up into separate bills or attaching provisions to other legislation. In their various forms, the House and Senate bills address a wide variety of issues including

said would be implemented at great costs with the likelihood of little or no gain. However, prior to adjournment, the Senate approved mandatory restitution legislation and is expected to conference the bill with the House, which approved its own bill early in the first session.

Although not a part of the *Contract with America*, anti-terrorism legislation commanded center stage following the April bombing of the Alfred P. Murrah Federal Building. The Senate acted first, passing a bill supported by the President that contained new mandatory minimum sentences for terrorist acts and added funding for law enforcement. The Senate bill also contained habeas corpus and prisoner civil rights litigation reforms. The House's anti-terrorism bill has cleared the Judiciary Committee, but has not yet

day shutdown followed, which had little impact on the courts but caused the Administrative Office to furlough about 75 percent of its staff. Following the next continuing resolution, House-Senate conference reached an agreement on the Commerce, Justice, State, and the Judiciary appropriation. However, the President vetoed the measure for various reasons, none of which related to the courts.

With the prospect of a fiscal year 1996 appropriation appearing unlikely, the Conference's Executive Committee determined that the Judiciary could maintain operations for a short period by using fee income and a small amount of miscellaneous carry-over funds. The Chief Justice asked congressional leaders to pass a free-standing appropriations bill for the Judiciary because the Commerce, Justice, State, and Judiciary measure was caught in a struggle between the legislative and executive branches. Merritt spoke publicly on the dire consequences of the failure to fund the courts, and AO Director Leonidas Pappas Mecham took these messages to influential members of the House and Senate and their staff. The result was that on January 5 Congress agreed to give the Judiciary a 5.1 percent increase over FY 95 for all of FY 96, while several major parts of the government received only short-term limited funding. The President vetoed the bill the following day.

Courthouses

An early indication that 1995 would be another year of fiscal scrutiny and belt tightening came with the passage of a bill that included \$1.5 billion in funds previously appropriated for courthouse construction. At the time, Chief Judge Robert C. Pooler (D. Ariz.), the chair of the Conference's Security, Space and Facilities Committee, and his successor, Judge Robert E. Cowen (3rd



(L to R) Judges Barefoot Sanders (N.D. Tex.), Gustave Diamond (W.D. Pa.), and Stephen H. Anderson (10th Cir.) testified on the Federal Courts Improvement Act.

Cir.), testified at congressional hearings on the steps being taken to bring greater efficiencies and cost-cutting to the courthouse construction process. At Congress' request, the Judicial Conference ranked, by priority, courthouse construction projects for FY 95 and 96. The Conference continued its review and amendment of the *U.S. Courts Design Guide* as the publication continued to receive congressional scrutiny. By year end, the Judiciary saw the appropriation for construction programs passed for one FY 95 and nine FY 96 courthouse projects. Authorization for pending projects was approved by the Senate, but has been held up in the House, while staff conducted a round of visits to courthouses on the east and west coasts.

Federal Courts Improvement Bill

An omnibus bill with more than 50 improvements and reforms in the administration and operation of the federal courts, the Federal Courts Improvement Act, has been introduced in the House and the Senate. The legislation contains provisions endorsed by the Judicial Conference that address the administrative, financial, and personnel needs of the judicial branch.

Senator Charles E. Grassley (R-

IA) chaired a hearing on the bill and received testimony from Judge Barefoot Sanders (N.D. Tex.), chair of the Judicial Branch Committee; Judge Stephen H. Anderson (10th Cir.), chair of the Committee on Federal- State Jurisdiction; and Judge Gustave Diamond (W.D. Pa.), immediate past chair of the Defender Services Committee. A Senate mark-up of the bill is expected to occur soon, and it is anticipated that the House will conduct hearings early in the second session.

Judgeships

In 1995, a total of 55 judges were confirmed. That compares to an average of 56 judicial confirmations each year since 1979.

In January 1995, Mecham transmitted to Congress the Judicial Conference's most recent request for judgeships. The draft bill as transmitted would authorize 20 additional temporary judgeships for the courts of appeals and 18 permanent and five temporary judgeships for the district courts. No bill has been introduced in Congress and action is unlikely until after the presidential election.

In late November, President Clinton signed P.L. 104-60, which extends the term of temporary

See Congress on page 4

Congress continued from page 3
judgeships created in 1990 by P.L. 101-650. The legislation provides that the first district judge vacancy occurring five years or more after the *confirmation* date of the judge appointed to fill the temporary judgeship will not be filled. The bill affects temporary judgeships in 12 districts.

In the first session, Congress also began consideration of legislation that would create 11 new bankruptcy judgeships. A hearing on the bill was held in early January before the House Judiciary Subcommittee on Commercial and Administrative Law. Chief Judge Paul A. Magnuson (D. Minn.), chair of the Conference's Committee on Administration of the Bankruptcy System, and two bankruptcy judges testified in support of the bill.

Other Bills of Interest

Among the additional legislation of interest to the Judiciary are the following:

■ **The Judicial Cost-of-Living Increase Act:** This legislation, introduced by Heflin in the Senate and Representative Roger Wicker (R-MS) in the House, would repeal the requirement relating to specific statutory authorization for increases in judicial salaries and provide for automatic annual increases in judges' compensation. For the third consecutive year, Congress and the President declined to give judges a cost-of-living increase.

■ **The Ninth Circuit Court of Appeals Reorganization Act:** The Senate Judiciary Committee approved legislation to divide the Ninth Circuit into two circuits—the Ninth and Twelfth Circuits. Chief Judges J. Clifford Wallace (9th Cir.) and Gerald B. Tjoflat (11th Cir.), and Judge Diarmuid F. O'Scannlain (9th Cir.) testified at a Senate hearing on the bill. Senator Conrad Burns (R-MT) blocked action on all nominees to the U.S. Court of Appeals for the Ninth Circuit until the bill cleared the committee.

■ **Court Arbitration Authorization Act of 1995:** Introduced by Moorhead, this bill would require all district courts to establish rules allowing mandatory or voluntary arbitration in civil actions. Judge Ann Claire Williams (N. D. Ill.), chair of the Conference's Committee on Court Administration and Case Management, testified in support of the Conference's position that courts should not be required to establish mandatory arbitration programs.

■ **Prison Litigation Reform Act:** An amended version of this legislation passed both houses as part of the Commerce, Justice, State, and Judiciary appropriations bill, which was vetoed by the President last December. The legislation would restrict remedial relief in prison condition cases and place restrictions on the ability of inmates to file civil rights suits. This legislation is expected to receive further congressional consideration during the second session.

■ **A Bill to Provide that Cases Challenging the Constitutionality of Measures Passed by State Referendum be Heard by a 3-judge Court:** This bill would require 3-judge panels to consider applications for interlocutory or permanent injunctions restraining the enforcement, operation, or execution of state laws adopted by referendum on the ground of unconstitutionality. The Judicial Conference opposes the bill, which has passed the House.

■ **The WTO Dispute and Review Commission Act:** This bill would establish a commission comprised of five federal judges from courts of appeals appointed by the President to review dispute settlements in which the U.S. is found to violate its World Trade Organization obligations. Judge Stanley S. Harris (D. D.C.), chair of the Conference's Committee on Intercircuit Assignments, testified in opposition to the bill. ⚡

Law Clerks Join Mentor on Bench



Senior Judge Frank A. Kaufman (D. Md.) (seated in photo) has guided the legal career paths of quite a few law clerks in his 30 years as a federal judge. He may be the first to have two of his former law clerks return and serve as district judges with him.

Judge Andre M. Davis (standing, photo left) was appointed to the bench in 1995 and was Kaufman's law clerk from 1978-79. Judge Benson Everett Legg (standing, photo right) was appointed to the same court in 1991 and clerked for Kaufman from 1973-74.

Judiciary Cost-cutting Measures Pay Off

Economizing, fiscal responsibility, and achieving more with less are more than buzz words in the federal judiciary. The Economy Subcommittee of the Judicial Conference's Budget Committee has gathered examples, and the Judiciary is actively implementing these ideas. The following are a sampling of the numerous efforts either underway or concluded to save or avoid costs and improve program effectiveness or delivery.



Management

- Judiciary Methods Analysis Program identified 34 better practices for probation offices and 56 better practices for bankruptcy court clerks offices.
- Private panel attorneys and experts travel at government rates, saving over \$180,000 in fiscal years 1994 and 1995.
- New standards approved by the Judicial Conference for the preparation of petty offense presentence reports and post sentence reports will allow more efficient preparation—and save time for probation officers.
- Quality assurance procedures for application software releases for the Integrated Case Management System have led to a reduction in the time required for external testing—a savings of at least \$10,000 during each 9-month cycle.
- Videoconferencing prisoner civil rights proceedings and certain types of bankruptcy proceedings reduces unproductive travel time and improves case scheduling.
- A new computer-based probation and pretrial services training program will eliminate the cost of training facilities, travel, etc., and save more than \$70,000 over a 2-year period.



Staffing

- Personnel levels in FY 95 and 96 were funded at only 84 percent of applicable staffing level, which saved the Judiciary about \$160 million a year. A similar amount is expected to be saved in FY 97, as this staffing level is maintained.

- Only two of three eligible new magistrate judge positions were designated for accelerated funding, reducing funding requirements by \$337,000.

- The discontinuance of a full-time magistrate judge position in the Eastern District of Michigan was recommended.

- After need was reexamined, the request for new bankruptcy judgehips was reduced from 19 to 11.

- New staffing standards for formulating court security officer requirements reduced FY 96 court security funding requests by \$12.5 million.

- Resource allocations, which favored more expensive contract court reporters in bankruptcy courts over electronic court recorder operators, were eliminated.



Equipment

- Replacing outdated automation equipment and using local maintenance on some equipment is saving \$5.6 million annually.

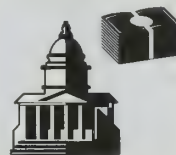
- Converting from commercial long-distance telephone services to FTS 2000 saves \$700,000. Replacing analog lines with digital lines saves \$71,000 on leased phone lines.

- Eliminating computer output microfiche services and substituting less expensive alternatives saves \$276,000 annually.

- Switching from a franked mailing system to postage metering saves at least \$1 million annually.

- A new telecommunications capability for court access to the Judiciary's mainframe computer reduces costs by \$292,000.

- By allowing local contractors and Judiciary personnel to install work stations, future installation costs of the Data Communications Network will be reduced by over \$3 million.



Resources and Facilities

- The Judiciary is developing a plan to control growth in space rental costs and to implement enhanced space management practices.

- Because new computers do not need specially designed computer rooms, rental of cheaper training/conference room space is possible, for a savings of about \$200,000 in GSA rent.

- After review by courts, six court facilities were closed—at a savings of about \$570,000.

- Central funding for certain law books was eliminated, contributing to a \$2 million savings in the law book program in FY 96 and beyond.

- Through FY 98, the centralized Bankruptcy Noticing Center will save about \$10 million in postage, supplies, equipment, staff, and other noticing costs.

- A new document imaging system in the Central Violations Bureau reduces costs by \$300,000 for staff and processing.

- A pilot project bringing electronic filing of maritime asbestos cases to the Northern District of Ohio is expected to save \$250,000. (See story on page 6.)

Electronic Filing System Brings Order to Mountain of Documents

The U.S. District Court in the Northern District of Ohio went "live" on January 2, 1996, with a first-of-its-kind electronic filing program. The court is pitting the program against a staggering maritime asbestos caseload—over 5,000 cases per year, with 10,000 pleadings filed weekly and, typically, 100 different defendants per case. Clerk of Court Geri Smith described the situation at the court, "Lawyers were bringing in six boxes of filings at a time. We were committed to a 24-hour turn around on docketing, but we were living with an 8-month backlog of over 250,000 pleadings. And just before the first wave of asbestos cases hit, our staff had been cut back. Staff volunteered to stay nights and weekends to get the work done, but we knew there had to be a better way to handle these cases. That's when we called the Office of Automation and Technology at the Administrative Office."

The court had tried streamlining the paper flow, and was able to cut 30-40 percent of the paper. It was still overwhelming. Smith felt the technology was there to help, and electronic filing was the key. Gary Bockweg and his Technology Enhancement Office team from the AO, who went out to Cleveland, Ohio, to assess the situation, agreed. "Confined to one large set of cases in a limited jurisdiction, it was attractive as a pilot project in electronic filing," said Bockweg. The Judicial Conference's Committee on Automation and Technology subsequently approved a pilot project in the district.

By court order, as of January 2, 1996, any attorney filing a document in a new maritime asbestos case in the Northern District of Ohio must do so using the electronic filing system. The system effectively makes

the attorney the docketing and filing clerk. To file electronic documents, such as responses to complaints, which are among the highest volume documents in these cases, the attorney prepares the document on a word processor, saves it in portable format (PDF), and submits it to the court via the Internet. A PDF file is used because it is much smaller than an image file and is fully text searchable. As the attorney submits the document, a menu provides guidance through the docket entry process. It's all automatic. The court or parties print the PDF document only if the case goes to trial and the judge requests a paper copy. Until then, it stays on the computer.

Said Bockweg, "All the attorney needs for electronic filing is a Macintosh or a personal computer capable of running Windows, some off-the-shelf software costing about \$200, and a subscription to an Internet service. We require brand name software now for compatibility reasons, but we won't always. The cost of entry is not high. Before we began, we did a phone survey of about 40 law firms, and they all had or could easily get this level of automation."

In the maritime asbestos cases, approximately 50 attorneys account for the bulk of documents, although more than 400 attorneys are involved at various times. Training seminars were held for Ohio bar members and their response to the electronic filing project ranged from accepting to enthusiastic. For their benefit, the test system for the Asbestos Electronic Document Filing System has been set-up. Attorneys have an opportunity to practice before running through the actual docketing process.

Of course there are issues that continue to arise due to the very na-

ture of electronic filing. For instance, how does an attorney sign an electronic document? A court order says that the act of logging on and entering a password—all necessary to submit an electronic file—constitutes a signature. And will lawyers submit their cases correctly? Quality assurance spot-checking by the court will keep track. Response time on the Internet might become a concern sometime in the future but according to Bockweg, if it does, the court can fall back to its own phone lines. Security is always a consideration, and there is a security "firewall," which shields the courts' computers from direct access from outside.

Last September, the Judicial Conference approved amendments to the Federal Rules of Civil Procedure allowing district courts to accept filings by electronic means as long as they are consistent with the technical standards, if any, that the Conference establishes. Companion rules were also approved for bankruptcy and appellate courts. These amendments are currently pending at the Supreme Court and are scheduled to become effective December 1, 1996.

While it has implemented the features needed to manage maritime asbestos cases, the pilot system does not provide all the case management features currently available through the Integrated Case Management System, and it was not intended as an alternative to the case management systems currently used in the courts. But the pilot program shows that the concept and the tools for electronic filing work, and it is helping the Ohio court solve a major problem.

Three-branch Conference Looks at Federal-State Relations

The second of an on-going series of inter-branch discussions among the three branches of federal government, along with state representatives, was held last month under the auspices of Representative Henry J. Hyde (R-IL) and Senator Orrin Hatch (R-UT). The conference was appropriately titled, "Continuing the Dialogue: A Three-Branch Conference."

The first conference, which was conducted in 1994, had considered the effect federalization of state civil and criminal law has on the justice system, and the 1996 conference continued that examination. Participants discussed the state prosecution of federal crimes, the remedial power of the federal courts over state institutions and, in a discussion by Chief Judge J. Clifford Wallace (9th Cir.), the mission of the federal courts. In another session led by Chief Judge Gilbert S. Merritt (11th Cir.), participants explored the federal judiciary's role in the legislative process.

Others who participated in the conference were Judges Stephen H. Anderson (10th Cir.), Maryanne Camp Barry (D. N.J.), Robert E. Owen (3rd Cir.), Wm. Terrell Davis (M.D. Fla.), Barefoot Sanders (N.D. Tex.), and Chief Judge Michael M. Mihm (C.D. Ill.). The Judiciary will host the next conference, likely to be held sometime in 1997. Attorney General Janet Reno attended the conference with several other high-ranking members of the U.S. Department of Justice. In addition to Hatch and Hyde, Representatives Charles T. Canady (R-FL.), Frederick K. Heineman (R-N.C.), and Robert C. Scott (D-VA) attended. Participants also included Lynne M. Abraham, district attorney for the County of Philadelphia; Stephen M. Saland of the New York



(L to R) Judge Stephen H. Anderson (10th Cir.) and Senator Orrin Hatch (R-UT) greeted one another at the Three-branch Conference.

State Senate; Morris L. Thigpen, Sr., the director of the National Institute of Corrections; New Mexico Attorney General Tom Udall; and

Reginald A. Wilkinson, director of the Ohio Department of Rehabilitation and Correction.

JUDICIAL MILESTONES

Appointed: Eugene M. Bogen, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Mississippi, December 14.

Appointed: Todd J. Campbell, as U.S. District Judge, U.S. District Court for the Middle District of Tennessee, December 27.

Appointed: Max O. Cogburn Jr., as U.S. Magistrate Judge, U.S. District Court for the Western District of North Carolina, December 29.

Appointed: Ransey Guy Cole Jr., as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Sixth Circuit, January 2.

Appointed: Susan J. Dlott, as U.S. District Judge, U.S. District Court

for the Southern District of Ohio, December 29.

Appointed: Kim M. Wardlaw, as U.S. District Judge, U.S. District Court for the Central District of California, January 3.

Appointed: Hugh Lawson, as U.S. District Judge, U.S. District Court for the Middle District of Georgia, December 29.

Appointed: John Thomas Marten, as U.S. District Judge, U.S. District Court for the District of Kansas, January 5.

Appointed: John R. Tunheim, as U.S. District Judge, U.S. District Court for the District of Minnesota, December 29.

See Milestones on page 8

Milestones continued from page 7

Appointed: Mark F. Marshall, as U.S. Magistrate Judge, U.S. District Court for the District of South Dakota, January 1.

Appointed: C. Lynwood Smith Jr., as U.S. District Judge, U.S. District Court for the Northern District of Alabama, January 4.

Appointed: E. Richard Webber, as U.S. District Judge, U.S. District Court for the Eastern District of Missouri, January 8.

Elevated: Magistrate Judge Barry Ted Moskowitz, to U.S. District Judge, U.S. District Court for the Southern District of California, January 2.

Elevated: Judge John C. Shabaz, to **Chief Judge**, U.S. District Court for the Western District of Wisconsin, succeeding Chief Judge Barbara B. Crabb, January 17.

Elevated: District Judge A. Wallace Tashima, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, January 8.

Senior Status: Judge Frank X. Altimari, U.S. Court of Appeals for the Second Circuit, January 1.

Senior Status: Judge David V. Kenyon, U.S. District Court for the Central District of California, October 27.

Senior Status: Judge Edward Rafeedie, U.S. District Court for the Central District of California, January 6.

Senior Status: Judge Barefoot Sanders, U.S. District Court for the Northern District of Texas, January 1.

Retired: Magistrate Judge Donald P. Dietrich, U.S. District Court for the Middle District of Florida, January 31.

Retired: Chief Bankruptcy Judge Conrad B. Duberstein, U.S. District Court for the Eastern District of New York, December 31.

Retired: Senior Judge Martin F. Loughlin, U.S. District Court for the District of New Hampshire, December 4.


Resigned: Magistrate Judge Robert A. Steinberg, U.S. District Court for the Southern District of Ohio, January 14.

Deceased: Senior Judge John A. Field Jr., U.S. Court of Appeals for the Fourth Circuit, December 16.

Deceased: Senior Judge Franklin T. Dupree Jr., U.S. District Court for the Eastern District of North Carolina, December 17.

Deceased: Senior Judge Roger D. Foley, U.S. District Court for the District of Nevada, January 7.

Deceased: Judge Okla Jones II, U.S. District Court for the Eastern District of Louisiana, January 8.

Deceased: Senior Judge Samuel M. Rosenstein, U.S. Court of International Trade, December 11. 

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of February 1, 1996

Courts of Appeals	
Vacancies	12
Nominees	6
District Courts	
Vacancies	39
Nominees	24
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	15

Courthouse Construction Program Attracts Review and Recognition

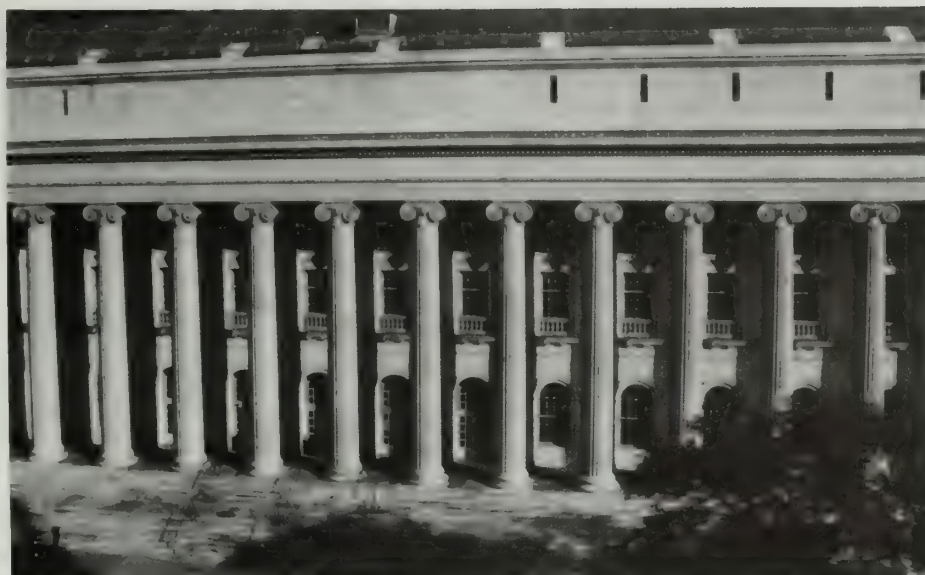
Several recent events occurred of significance to the federal Judiciary's courthouse construction program. The first is the announcement by the Judicial Conference's Committee on Security, Space and Facilities of an evaluation of the *U.S. Courts Design Guide* with the assistance of the National Institute of Building Sciences. The second is the resignation, effective March 1, 1996, of Roger Johnson, administrator of the General Services Administration (GSA). The third and fourth are national awards recognizing the Denver, Colorado, Courthouse and Judge Douglas P. Woodlock (D. Mass.).

Guide Review

Over the next four months, the Judiciary will undertake a comprehensive review of the *U.S. Courts Design Guide*.

The review will include surveys of judicial branch personnel and experts in the building and construction fields, analysis and evaluation of survey findings, and final recommendations by judicial review groups. The review will begin with the compilation of a comprehensive database of individuals—judges, court administrators, contractors, architects, engineers, and representatives of professional organizations—who may help identify key issues and develop priorities.

The *Guide*, first approved by the Judicial Conference and published in its present form in 1991, was developed in a cooperative effort between the Judiciary, the GSA, and a team of experts in space planning, security, acoustics, mechanical-electrical systems, and automation, under the direction of the Institute and the Judiciary. Intended to be a guide for the cost-effective construction of U.S. courthouses, it has been periodically reviewed and amended by the Judicial Conference to reflect



Byron White United States Courthouse, Denver, Colorado

cost-cutting initiatives and changing requirements.

GSA Changes

Last month, Roger W. Johnson, administrator of the GSA, announced his resignation, effective March 1, 1996. Johnson began his 3-year tenure developing a new working relationship between GSA and the courts. In September 1993, Johnson instituted a "Time Out and Review" initiative for the federal building program that halted construction on all projects approved but not yet under construction. In announcing his resignation, Johnson, a Republican, also said he has switched to the Democratic party and will work for the Clinton presidential campaign, as he did in 1992.

Design Awards

Judge Douglas P. Woodlock (D. Mass.) is the 1996 recipient of the Thomas Jefferson Award for Public Architecture. The annual award, established by the American Institute of Architects, recognizes excellence in architectural advocacy and achievement. Woodlock was cited for leading a series of seminars on the process and substance of design-

ing courthouses and the importance of the highest quality of design for civic buildings. Woodlock has a strong scholarly interest in architecture and the symbolism of the courts and regularly lectures at the Harvard Graduate School of Design.

The restoration of the Byron White United States Courthouse in Denver, Colorado, by the GSA and Michael Barber Architecture, earned a 1995 Presidential Design Award from the National Endowment for the Arts (NEA). The awards honor exemplary federal design achievements and are given every four years for works authorized, commissioned, produced, or supported by the federal government. The courthouse's preservation, according to the NEA, "illustrates a strategy that combines a deep respect for the past with the thoughtful integration of totally new uses. . . . It exemplifies an innovative model for preserving this country's important legacy of distinguished federal buildings, while updating them to contemporary uses." The Denver courthouse's exterior, public corridors, and several rooms received an historically accurate face-lift in 1994.

Ginsberg and Bankruptcy Review Commission Look Ahead

Bankruptcy Judge Robert E. Ginsberg (N.D. Ill.) is the acting chair of the National Bankruptcy Review Commission, succeeding former Congressman Mike Synar, who resigned December 19, 1995. Synar died last month following a long illness.

Q: When was the National Bankruptcy Review Commission formed, and what is its mandate?

A: The National Bankruptcy Review Commission was created by the Bankruptcy Reform Act of 1994. All commission members were appointed by January of 1995, funding was received in July of 1995, and the first meeting was held on October 20, 1995.

The charge to the commission is to (1) investigate and study issues and problems relating to the bankruptcy code; (2) evaluate the advisability of proposals and current arguments with respect to such issues and problems; (3) prepare and submit a report; and (4) solicit divergent views of all parties concerned with the operation of the bankruptcy system.

Q: How is the commission structured, and what special areas of expertise or interest do its commissioners bring to the commission?

A: There are nine commissioners, all appointed for the life of the commission. Three members were appointed by the President, one each appointed by the majority and minority leaders of the House and Senate, and two were appointed by the Chief Justice.

The President also designates the

commission chair and he selected former Oklahoma Congressman Mike Synar. Synar, who had been active in virtually every change in bankruptcy law since the Bankruptcy Reform Act of 1978, passed away in early January of 1996, after a 6-month fight with brain cancer. As with every project he ever under-

bankruptcy litigation. Chief Justice Rehnquist appointed Judge Edith H. Jones (5th Cir.). Judge Jones had an active bankruptcy practice for several years before being appointed to the federal bench. I was also appointed by the Chief Justice, and Synar asked me to serve as vice-chair, an appointment that was rati-

"The reach and effect of bankruptcy is almost without limit when one considers the Orange County municipal bankruptcy, mass tort cases, and airline bankruptcies, among others."

took, Mike Synar led the commission with dignity and principle, and we shall miss him tremendously, both as a leader and a friend.

President Clinton also appointed Babette A. Ceccotti, a New York attorney specializing in labor and pension law and bankruptcy, and Jay Alix, a CPA and turnaround management specialist based in Michigan, the only non-lawyer on the Commission. Former Senate Majority Leader George Mitchell appointed Jeffrey J. Hartley, who had worked closely with Senator Howell T. Heflin on bankruptcy legislation for a number of years. Senator Bob Dole, then Senate Minority Leader, named James I. Shepard, a bankruptcy and insolvency tax consultant. Former House Minority Leader Robert H. Michel chose M. Caldwell Butler, a former congressman from Virginia who was very active in the 1978 Bankruptcy Reform Act, and who went into bankruptcy practice after leaving Congress. Former Speaker of the House Thomas Foley appointed John A. Gose, a Seattle attorney specializing in real estate and

fied by the commissioners at their first meeting. When Synar resigned from the commission shortly before he died, I became acting chair, and I will continue to serve in that capacity until the President designates a permanent chair.

In addition, Synar appointed and the commission confirmed Elizabeth Warren, who is the Leo Gottlieb Professor of Law at Harvard Law School, as the chief reporter of the commission. Based in the commission's Washington, D.C., office, Jarilyn Dupont is the executive director and general counsel of the commission, working with a deputy counsel and administrative officer.

Q: The National Bankruptcy Reform Act of 1994 was one of the most sweeping pieces of bankruptcy legislation in the last 15 years. What areas of bankruptcy will the commission focus on in the immediate future, and how will these areas be determined?

A: At its November 1995 meeting, the commission

FEBRUARY

MARCH

- 12 Tuesday**
Committee on Long Range Planning
- 12-13 Tuesday-Wednesday**
Judicial Conference of the United States
- 13-15 Wednesday-Friday**
National Workshop for Bankruptcy Judges I
- 13 Wednesday**
Committee on the Judicial Branch
- 18-20 Monday-Wednesday**
Workshop for Judges of the Fourth Circuit
- 18-20 Monday-Wednesday**
Seminar for Circuits Adopting Bankruptcy Appellate Panels
- 18-22 Monday-Friday**
Video Orientation for Newly Appointed Magistrate Judges
- 21-22 Thursday-Friday**
Advisory Committee on Bankruptcy Rules
- 25-27 Monday-Wednesday**
Workshop for Judges of the Tenth Circuit

CHIEF PROBATION OFFICER, Eastern District of Missouri

The Eastern District of Missouri encompasses the eastern portion of the state. The Court has eight district judges and seven magistrate judges. The Probation Office is headquartered in St. Louis, with a staffed divisional office in Cape Girardeau. The Chief Probation Officer manages a staff of 52 and is responsible for the administration and management of probation, supervised release, and parole services in the district. To apply, send a resume by **March 1, 1996**, to the Honorable Jean C. Hamilton, Chief Judge, U.S. District Court, 1st Floor, 1114 Market St., St. Louis, MO 63101. The person selected will be required to undergo a full FBI background investigation.

CHIEF DEPUTY CLERK, Western District of Michigan

The U.S. District Court for the Western District of Michigan is seeking applications for a full-time Chief Deputy Clerk to be located in the Grand Rapids Clerk's Office. (Position contingent upon funding.) The Chief Deputy serves as the principal assistant to the Clerk of Court with supervisory and administrative responsibilities covering headquarters and divisional offices. Applicants must have a minimum of five years of progressively responsible administrative experience, including at least three years in a position of substantial management responsibility, which provided a comprehensive understanding of modern management techniques and automated systems. A bachelor's degree is required. A graduate degree in Public Administration, Business, Judicial Administration or Law is preferred. Salary: \$59,920-\$91,629. Please submit a resume, SF-171 form, letter of interest, references, and college transcripts to U.S. District Court, 452 Federal Building, Grand Rapids, MI 49503, Attn: Melanie S. Vugteveen. Phone: (616) 456-2389. Closing date for applications is **March 4, 1996**.

CHIEF DEPUTY CLERK, Central District of California

The nation's largest bankruptcy court, with 21 judges, 370 deputy clerks, and five full-time court locations, seeks a Chief Deputy Clerk for court operations: courtroom services, case administration, records management, and case initiation. Incumbent will spearhead the court's efforts in electronic filing, advanced case management automation, productivity initiatives, and alternative management organizations. Position reports to the Executive Officer/Clerk of the Court and acts on behalf of the Clerk in his absence. Requires degree in business, management sciences, political science, or public administration. Salary: \$63,717-\$114,270, commensurate with experience. **Open until filled.** Call (213) 894-3129 for application/information.

EQUAL OPPORTUNITY EMPLOYERS

identified six general areas to investigate. Each will be the substantive focus of a meeting where the commission will invite participants with expertise in the area to speak. These areas are (1) bankruptcy administration; (2) consumer bankruptcy; (3) environmental issues, tax, banking, insurance, regulated industries, future claims, mass torts, Chapter 9; (4) employees, labor, pensions; (5) business bankruptcy, partnerships, transnational; and (6) who can be a debtor; the role of bankruptcy, and bankruptcy as commercial law. Of course, these identified areas are quite broad and the commission cannot hope to address all elements of each.

The first topic addressed by the commission was bankruptcy administration, and this was the focus of a meeting on February 23, 1995, in Washington, D.C. The commission will then turn to the subject of consumer bankruptcy.

Q: Do you anticipate the commission's role as fine-tuning or as overhauling the bankruptcy system?

A: Minor tinkering with the provisions of the bankruptcy code is something that is addressed through the technical amendments bill that currently is moving through Congress. While the commission has not made a definitive statement on this matter, the work plan that the commission has laid out thus far indicates the propensity to take more of a macro approach. Synar was of the view that Congress' charge invited the commission to take a broad approach, looking, inter alia, into how the bankruptcy code impacts the domestic economy and how it affects the role of the United States in the world economy.

Q: The National Bankruptcy Commission has been tasked



Bankruptcy Judge Robert E. Ginsberg

by Congress with soliciting divergent views on the operation of the bankruptcy system. How will the commission accomplish this task?

A: The commission tries to maintain an active presence in the bankruptcy community so that it can solicit the views of as many parties as possible. To this end, it held a public hearing in conjunction with the National Conference of Bankruptcy Judges on November 1, 1995. In addition, members of the commission have attended dozens of meetings of other groups to report on progress and to exchange ideas. The commission's chief reporter, with commission staff, is putting together teams of experts to make submissions at the public hearings and is soliciting the view of those in academia. The commission welcomes comments and suggestions from the public. Correspondence can be sent to the commission's office at One Columbus Circle, N.E., Suite G-350, Washington, D.C. 20002, or to commissioners directly. The commission also can be reached via e-mail at nbrchq@mail.erols.com

Q: Congress has formed similar commissions in the



Representative Mike Synar

past, and Congress continues to carefully examine the bankruptcy laws. Why is changing the bankruptcy system so important?

A: Approximately one million bankruptcy cases are filed each year, involving billions of dollars of debt. All commercial transactions are structured with bankruptcy implications in mind. To this end, the bankruptcy system should provide predictability as well as economically efficient structures for dealing with the consequences of financial failure of various types of enterprises. The reach and effect of bankruptcy is almost without limit when one considers the Orange County municipal bankruptcy, mass tort cases, and airline bankruptcies, among others. Likewise, in consumer cases, the bankruptcy code must balance the rights of debtors and creditors in far reaching ways. For example, the Bankruptcy Reform Act of 1994 overhauled family law in such a way to strengthen perceived family values in the bankruptcy context—at the expense of the debtor's fresh start. Therefore, Congress has a strong interest in creating and maintaining a workable bankruptcy system structure. ⚖️

Conference Will Submit Institutional Response to Grassley Survey

Senator Charles Grassley (R-Iowa), chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, has sent a survey questionnaire to all judges of the district courts and courts of appeals encouraging them to respond individually to a series of questions relating to judicial administration.

Chief Judge Gilbert Merritt (6th Cir.), chair of the Executive Committee of the Judicial Conference, has written to Grassley to inform him that in addition to the individual responses he will receive from judges, the Conference will provide an institutional response.

"As you know, the Judicial Conference is the official policy-making

body for the federal Judiciary, and it supervises the budget for the federal courts," Merritt wrote. "Traditionally, when the Congress has sought information, advice, reports or recommendations from the Judiciary, it has directed its requests to the Conference." Merritt noted that although the Executive Committee understands that Grassley wants individual judges to answer his survey, "the results of your survey would be more reliable and complete if you supplement the responses of the individual judges with Judiciary-wide information."

Merritt also has sent a memo to all judges notifying them of the Executive Committee's action and encour-

aging judges to respond individually as well. "We are hopeful that providing this information will result in increased understanding and cooperation between Congress and the federal Judiciary," Merritt said.

Late last month Grassley sent his survey to all active and senior court of appeals and district court judges. The survey contains four sections dealing with judicial administration and workload, circuit conferences, outside work activities, and a general section. An expanded version was sent to chief judges. In his memo that transmitted the survey, Grassley said, "My intention is to begin a dialogue that will have positive results."

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28

Number 3
March 1996

Case Load Increases Throughout Judiciary

U.S. District Courts
Weighted Filings
per Judgeship



Up
16%



1991-1995

U.S. Courts of Appeals
Filings per 3-judge
Panel



Up
16%

In fiscal year 1995, filings of appeals, civil, criminal and bankruptcy cases increased in federal courts nationwide. Bankruptcy filings rose over 5 percent last year, civil filings in the district courts rose 5 percent, and criminal cases increased 1 percent. Appellate case filings, in par-

ticular, were near record levels in 1995, for a 16.4 percent increase since 1991—nearly keeping pace with a 17.8 percent rise in civil cases over the last five years.

In FY 95, the number of criminal defendants grew 3 percent, with the

See Filings on page 2

Cost Cutting Guides FY 96 Spending Plan

The entire federal judicial branch continues to focus its efforts on reducing spending and ensuring that already scarce resources are being used as efficiently and effectively as possible. It is estimated that the Judiciary's various cost consciousness initiatives will result in about \$750 million in cost savings and avoidances for fiscal years 1995 through 1997, with more than \$250 million in annual cost savings and avoidances in ensuing years.

Chief Judge Richard Arnold (8th Cir.), chair of the Conference's Budget Committee, is expected to present the Judiciary's FY 97 budget request to Congress later this month. Arnold also will provide further details on judicial branch efforts to improve productivity and efficiency. The House reportedly will act on all 13 appropriations bills by the end of June.

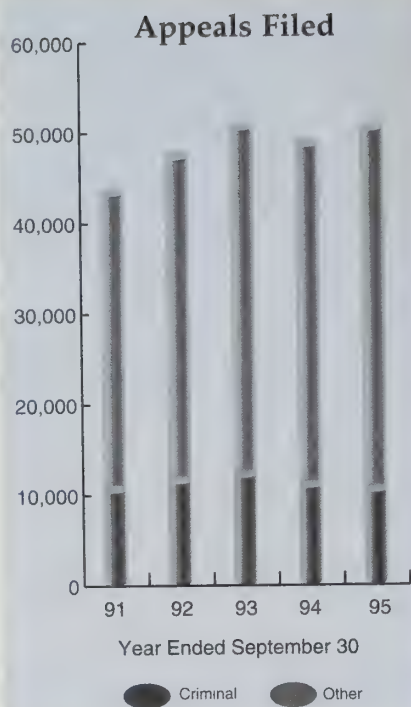
Last month, the Executive Committee of the Judicial Conference gave final approval to the financial plan for the Judiciary's Salaries and Expenses appropriation for FY 96. Although the Executive Committee adopted an interim plan in September, the process was delayed by prolonged debate between

See Funding on page 4

INSIDE

Parole Commission Transfer Studied
Cuba Legislation Impacts Courts
ABA President Discusses Agenda

6
9
10



Filings continued from page 1

number of drug crime defendants increasing 5 percent. And because the number of authorized judgeships has remained unchanged since 1990, the judicial workload at both the appellate and district court levels rose markedly. The total number of weighted civil and criminal filings per district judgeship has increased 16 percent over the last five years, and appeals filings per 3-judge panel also increased 16 percent. Weighted case filings per judgeship account for differences in the time required for judges to resolve various types of civil and criminal actions.

Appeals

Cases filed in the 12 regional courts of appeals rose nearly 4 percent in 1995 to 50,072. That total represents a 16.4 percent increase in cases filed over a 5-year period. Original proceedings, bankruptcy, and civil appeals all registered increases in filings, growing 27 percent, 21 percent and 6 percent, respectively. The growth in civil

appeals was due primarily to an increase in prisoner petitions and employment civil rights cases, which both increased 15 percent. Of eight circuit courts of appeals reporting increases, the Fourth Circuit reported the largest. Its 30 percent jump in cases consisted largely of prisoner petitions and bankruptcy appeals related to a single bankruptcy case. The overall increase in filings was reflected in a rise from 868 to 899 appeals filed per three-judge panel.

Nationally, pro se cases made up 40 percent of all appeals filed in 1995, up from 38 percent in 1994, with most pro se litigants submitting prisoner petition appeals. The numbers of prisoner petition appeals and employment civil rights appeals involving pro se litigants rose 14 and 10 percent, respectively, in 1995.

The number of criminal appeals filed decreased 5 percent, due to drops in appeals related to drug, robbery, and fraud cases. Drug-related appeals fell by 605 cases, a drop that appears to stem from diminishing drug crime filings in district courts during 1993 and 1994.

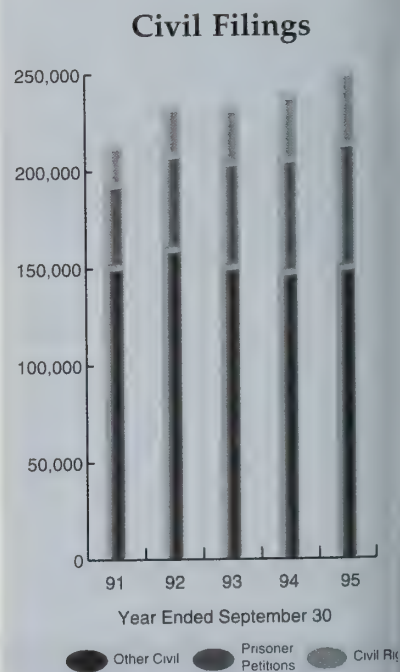
Administrative agency appeals fell 2 percent in 1995, largely due to a 52 percent decline in appeals of decisions by the Federal Energy Regulatory Commission.

Civil

In 1995, U.S. district courts experienced a 5 percent increase over the previous year in civil cases filed, representing an 18 percent increase over the last five years. As a result, filings per authorized judgeship jumped from 364 in 1994 to 383 in 1995, the highest total since 1989.

The growth in civil cases was in private cases (those in which the U.S. government is not a party) pertaining to federal question jurisdiction; that is, the federal courts' interpretation and application of the U.S. Constitution, acts of Congress, or

treaties. Private federal question litigation filings increased 13 percent, with the tripling of personal injury/product liability filings. Most of those 15,000 cases were breast implant cases removed from state to federal courts. Other increases in private federal question cases included civil rights filings, which were up 13 percent, because civil rights employment filings jumped 2 percent. Five U.S. district courts (S.D. N.Y., S.D. Tex., M.D. Fla., S.D. Fla., and N.D. Ga.) each reported more than 100 additional private civil rights employment filings in 1995. Court officials in these districts reported that this growth in filings was spread among suits alleging sex, race, or age discrimination. Private federal question cases involving state prisoner petitions also increased 9 percent, due to a 7 percent rise in civil rights filings by prisoners. Four U.S. district courts (D. S.C., E.D. Va., W.D. Va., and C.D. Calif.) each reported more than 150 additional filings of this type in 1995. These increases were



Criminal Filings



tributed to changes affecting inmates, such as the abolition of parole, the implementation of medical co-payments, and interstate transfer programs.

Civil actions involving the U.S. as plaintiff or defendant saw a 5 percent drop in 1995 to 43,158 cases. U.S. plaintiff cases dropped because of reductions in contract actions, real property actions, and forfeiture and penalty cases. There was a 2 percent decline in the number of cases in which the U.S. was a defendant last year, because of a 15 percent drop in social security cases. This drop was offset by a 16 percent increase in federal prisoner petitions, due to a 29 percent rise in motions to vacate sentence.

Criminal

A 1 percent increase in criminal case filings in 1995 might not seem significant, until it is paired with a 3 percent increase in the number of defendants. This rounds out a picture of federal court cases of increasing complexity involving multiple

defendants. Multi-defendant cases have been found to require 95 percent more time from judges per defendant than single defendant cases. The rising complexity and the additional time required by federal sentencing guidelines to disclose presentence reports and address objections have meant that the median disposition time for criminal defendants, the period that elapses between the filing of a case and its disposition, has risen steadily over the past decade. In 1995, the median disposition time for criminal defendants was 5.7 months, up from the median time for the last two years of 5.4 months. For drug crime defendants, this period was 7.8 months.

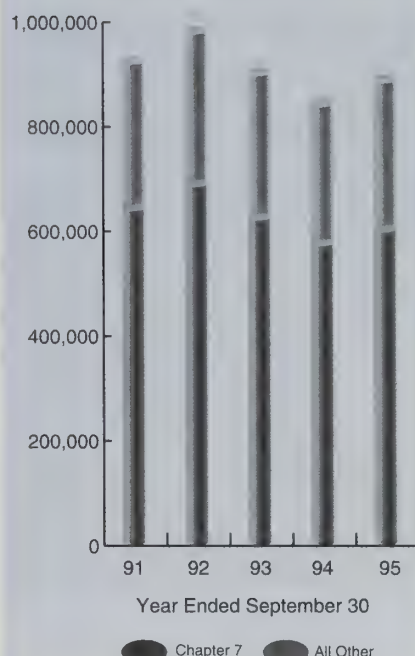
Immigration, fraud, weapons and firearms, and drug crime filings formed the bulk of the national criminal caseload. Drug crime cases accounted for 26 percent of all criminal filings in 1995, followed by fraud cases at 16 percent, immigration cases at 9 percent, and weapons and firearms cases at 8 percent.

Drug crime filings rose 1 percent, while the number of drug crime defendants increased 5 percent. Immigration filings jumped 53 percent (up 1,364 cases) in 1995. The growth was due to the impact of Operation Gatekeeper, a Department of Justice (DOJ) border enforcement program along the southwestern U.S. border. Another DOJ program, the Anti-Violent Crime Initiative, may be in part accountable for a 16 percent increase in weapons and firearms prosecutions, a 51 percent increase in homicide cases, and a 47 percent rise in juvenile delinquency proceedings. Increased DOJ prosecution of health care fraud cases may have contributed to a 5 percent growth in fraud cases.


Bankruptcy

For the fiscal year that ended on September 30, 1995, 883,457 bankruptcy cases were filed in federal

Bankruptcy Filings



courts, for a 5.5 percent increase over FY 94. Filings increased in all but eight districts during 1995. This year's growth in bankruptcy filings is likely linked to the rise in debt as a percentage of personal income.

The rise in bankruptcy filings primarily consisted of increases in Chapters 7 and 13 cases, which grew 5 and 9 percent, respectively. Of the total number of bankruptcy cases filed, there were 598,250 Chapter 7 cases and 271,650 Chapter 13 cases filed. The increase in total bankruptcy filings was the result of a 6 percent increase in non-business or consumer filings, which more than offset a slight drop in business bankruptcy filings. The District of New Jersey, the Eastern District of Virginia, and the Western District of Washington reported the largest numerical increases, while the Central District of California and the District of Arizona reported the greatest declines in filings. 

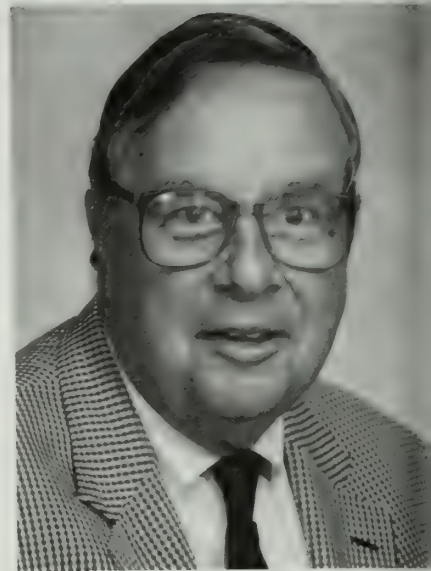
Chief Judge Glenn Archer Joins Executive Committee



Chief Judge Glenn L. Archer, Jr.

There have been changes in the membership of the Executive Committee, the executive arm of the Judicial Conference, in the last month. Chief Judge Glenn L. Archer Jr. (Fed. Cir.) succeeds Judge Sam J. Ervin, III (4th Cir.), whose term as chief judge of the circuit has expired. In addition, Judge J. Clifford Wallace (9th Cir.) stepped down as chief judge, effective March 1, 1996, leaving a vacancy on the committee.

The 7-member Executive Committee is chaired by Chief Judge Gilbert S. Merritt (6th Cir.). Members, who must also be members of the Judicial Conference, are appointed by the Chief Justice and serve an open term.



Judge Sam J. Ervin, III

Funding continued from page 1
Congress and the President over the appropriations bill containing the Judiciary's funding. A resolution was reached after the first of the year when the Judiciary was funded through September 30, 1996, in a separate spending measure. In FY 96, the Judiciary receives a 5.1 percent increase over the FY 95 level.

Typically, Judiciary resources are allocated to nine major areas, with the bulk supporting the operations of the courts of appeals and district courts. (See charts on page 5.) The following are some of the key provisions in the FY 96 spending plan:

- Maintenance and some enhancements to the current automation systems will be funded. Replacement of obsolete financial systems, manual accounting systems, and incompatible locally developed systems will improve control of funds and accounting services. Modernization of the automated jury management system will improve juror utilization and reduce costs associated with jury opera-

tions. Installation of the Data Communications Network (DCN) will continue, bringing the total number of DCN sites to 182. Approximately 82 percent of court staff Judiciary-wide will have access to the DCN.

- Full funding is included for all projected Criminal Justice Act (CJA) representations during FY 96. Post Conviction Defender Organizations will receive funds to ensure an orderly end to these organizations. Congress eliminated the PDCOs but provided funds to wind down their operations effective April 1, 1996.

- Panel attorney rates will increase \$5 per hour for work performed on or after January 1, 1996, in those districts approved for higher CJA rates. The Conference has approved a higher rate of up to \$75 an hour for 89 of the 94 districts, but has had sufficient funds to implement the rate in only 16 of the districts. The \$5 an hour increase would not affect these 16 districts, but would be put in place in those districts that continue to operate under the lower rates. These panel at-

torneys have been paid at a rate of \$40 an hour for out-of-court work and \$60 an hour for in-court work since 1984.

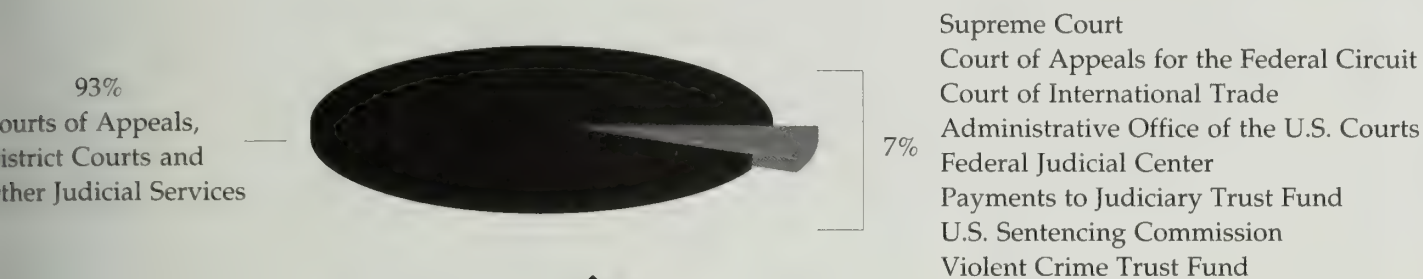
- Up to \$529.2 million is included to reimburse the General Services Administration for the cost of space currently occupied. The Conference is developing a plan to control growth in space rental costs and is implementing enhanced space management practices.

- Full funding has been received for court security, including funds for the procurement, installation, and maintenance of security equipment. Safeguarding the courthouse and staff of the federal Judiciary is high priority, especially in the wake of the Oklahoma City bombing and continued threats to the safety of federal judges.

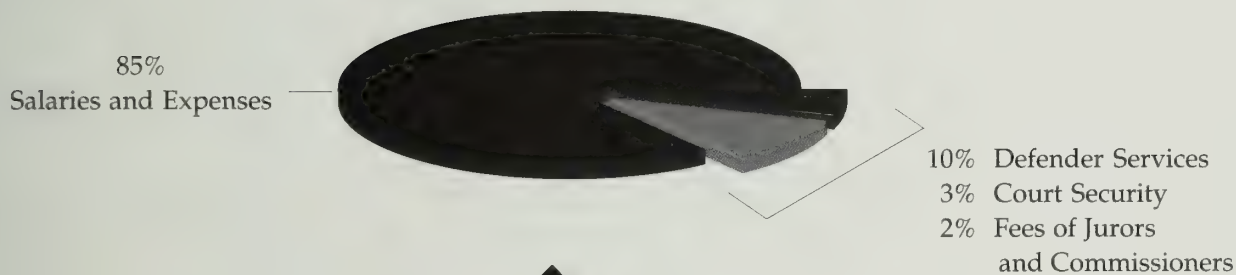
- Court offices will be staffed at reduced levels, enabling the Judiciary to avoid more than \$160 million in operating costs in both FY 95 and FY 96. ⚡

Fiscal Year 1996 Judiciary Resources: How Are They Allocated?

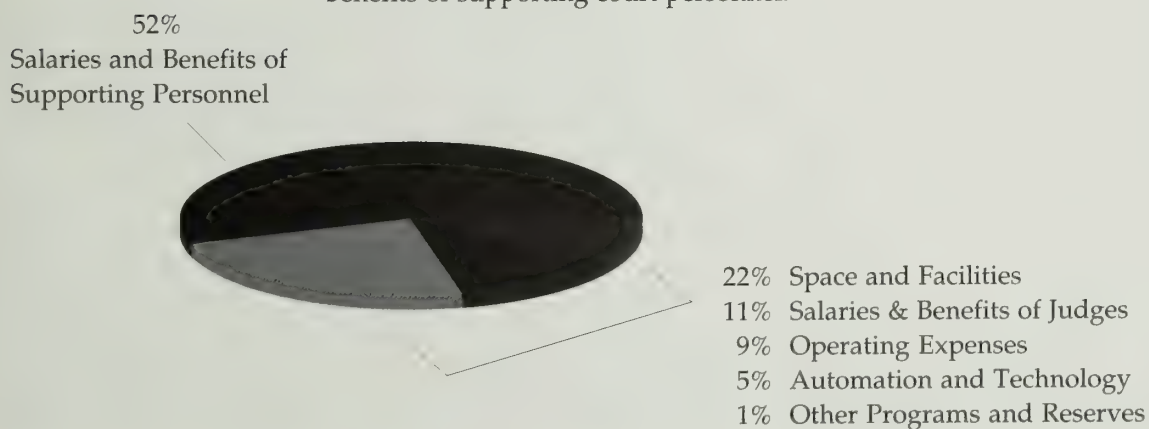
The Judiciary's resources for fiscal year 1996 are allocated to the major areas, with the bulk of resources supporting its courts of appeals and district courts.



Resources allocated to the courts are broken down into support for specific programs.



The money allocated to Salaries and Expenses is further divided with the largest percentage going to salaries and benefits of supporting court personnel.



Study Says Parole Commission Transfer Costly and Ineffective

Transfer of U.S. Parole Commission functions to the federal Judiciary would be costly and inefficient and would result in a dilution of already scarce judicial resources, says a study conducted at the request of the two congressional appropriations committees. The study by the U.S. Parole Commission and the Administrative Office assessed the feasibility of transferring the workload of the Parole Commission to the Judiciary by September 30, 1996.

Although the Sentencing Reform Act of 1984 eliminated parole for all federal crimes committed on or after November 1, 1987, the commission was continued until November 1, 1992, to deal with parole-eligible offenders still in the prison system. Congress subsequently extended the commission's life until November 1997. In 1995, a report by the House Committee on the Budget suggested the elimination of the commission as a money-saving measure. The Committees on Appropriations for both the House and the Senate acknowledged that after the sunset of the Parole Commission there would still be parole-eligible prisoners who require continuing casework review. The transfer of the commission's responsibilities to the Judiciary is being considered as a possible solution to this problem.

Instead of eliminating the commission or transferring its functions to the Judiciary, the Department of Justice has proposed a 5-year extension of the commission to November 1, 2002. It is projected that in five years, the number of parole-eligible inmates will diminish to 2,131, less than one-third of the current number. During that time, the commission's budget and size would be gradually reduced, although the commission's work would continue. A bill, S. 1507, adopting this approach has been passed by the Sen-

ate. The House intends to schedule hearings on the bill in late spring. The Judicial Conference, following the recommendation of the Federal Courts Study Committee, has endorsed the continuation of the Parole Commission or the creation of a successor agency within the executive branch.

Documents released by the House Budget Committee suggested the transfer of the commission's responsibilities to the Judiciary and the elimination of the commission's appropriation as a way to save nearly \$36 million over the next five years.

However, the joint Parole Commission/Judiciary study contends that "transferring the parole function from a specialized executive branch agency with a small staff to hundreds of judicial officers plus support staff and/or thousands of probation officers plus support staff located throughout the U.S. and its territories, would be extraordinarily inefficient and costly." The following are some of the anticipated results of such a transfer:

- Hearings and "record reviews" could be assigned to the district court nearest to the prisoner's facility, regardless of the available judicial resources. At the end of fiscal year 1996 there will be approximately 6,723 parole-eligible prisoners, and in FY 97, 2,403 parole hearings would be conducted. There are more than 26,000 active parole files, which include persons not under supervision or incarcerated in federal facilities, i.e. deported aliens still on parole and offenders serving state sentences with outstanding parole violation warrants.

- District judges would adjudicate parole violations unless legislation were enacted giving magistrate judges the authority. The commission has established a body of guidelines governing parole viola-

tion behavior that have the force of law, which the court would have to observe in revocation proceedings. Application of these guidelines will require ongoing training and support function for staff in every district.

- Parole hearings and record reviews would require either prisoner travel to the courtroom or travel by a judicial official to a federal prison, with responsibility for prisoner transportation and security falling to the U.S. Marshals Service. In FY 97 this alone would cost nearly \$14 million, totalling \$41 million over the next four years.

- Imposing the parole release hearing function on probation officers would have a detrimental impact on public safety. The additional duty would reduce the time probation officers have to adequately supervise offenders in the community with diminished collection of restitution and fines, reduced drug testing, and less frequent monitoring of offenders' circumstances.

- Shifting prisoner appeals from the commission's National Appeals Board would impose the expense and burden of addressing prisoner complaints on the courts or would require the re-creation of another review process to resolve prisoner appeals.

Some congressional action is almost certain, if only because of strong concern that if the commission is allowed to expire in 1997, with no substitute mechanism in place, prisoners could file habeas corpus petitions seeking release on the ground that their right to a determination or review of final parole release dates had been unconstitutionally eliminated. Additionally, no authority would exist to review and rescind the release dates of inmates who engage in misconduct.

MARCH

- 12-13 Tuesday-Wednesday**
Judicial Conference of the United States
- 21-22 Thursday-Friday**
Advisory Committee on Bankruptcy Rules
- 25-27 Monday-Wednesday**
Workshop for Judges of the Tenth Circuit

APRIL

- 15-16 Monday-Tuesday**
Advisory Committee on Appellate Rules
- 17-19 Wednesday-Friday**
Conference for Chief United States District Judges
- 18-19 Thursday-Friday**
Advisory Committee on Civil Rules
- 22-23 Monday-Tuesday**
Advisory Committee on Evidence Rules
- 22-24 Monday-Wednesday**
Workshop for Judges of the Third Circuit
- 25-27 Thursday-Saturday**
Eleventh Circuit Conference
- 29-30 Monday-Tuesday**
Advisory Committee on Criminal Rules

BANKRUPTCY JUDGESHIP, Western District of Washington

The planned date of appointment is November 1, 1996. Appointment is for a 14-year term. Salary: \$122,912. Relocation expenses will not be paid. Full public notice with qualification standards is posted in the offices of the Clerks of the U.S. District and Bankruptcy Courts for the Western District of Washington. For further information and application forms contact Office of the Circuit Executive, U.S. Courts, P.O. Box 193846, San Francisco, CA 94119-3846. Phone: (415) 744-6150. Deadline for receipt of completed applications is Monday, **April 1, 1996**.

CLERK OF COURT, District of Maryland

Applications are being accepted for the position of Clerk of Court for the U.S. Bankruptcy Court for the District of Maryland. The Clerk functions as the court's chief administrative officer and is responsible for all aspects of its operation, including case processing, policy implementation and monitoring, training, long-range planning, budgeting, space and facilities, financial accounting, public relations, property and procurement, and management of a staff of 80. The Clerk is also responsible for developing and maintaining a broad range of automation applications. The Clerk serves as the court's liaison to the public, the bar, and other governmental agencies. The official duty station is Baltimore, Maryland, with a division of the court in Greenbelt, Maryland. Applicants must possess a minimum of ten years of progressively responsible management experience. Prior court experience is highly desirable. The position carries a target JSP grade of 17. Persons interested must submit four copies of form SF 171 or detailed resume and salary history to Paul Mannes, Chief Judge, U.S. Bankruptcy Court, 6500 Cherrywood Lane, Greenbelt, Maryland 20770-1249. Applications must be received by the close of business on **May 15, 1996**, or until the position is filled.

SUPERVISORY STAFF ATTORNEY, U.S. Court of Appeals for the Second Circuit

Applications are presently being accepted for the position of Supervisory Staff Attorney in the Staff Attorneys' Office of the U.S. Court of Appeals for the Second Circuit. The Staff Attorneys' Office serves the court at large, assisting in the disposition of appeals through preparation of bench memoranda for *pro se* motions, *pro se* appeals and counseled motions, procedural advice to *pro se* litigants, and other administrative responsibilities. A supervisory staff attorney must possess superior writing, teaching, and research skills and have three or more years of experience in the federal courts. The day-to-day responsibilities of this position consist of assigning legal work, reviewing the law clerks' bench memoranda before their submission to panels of judges, drafting bench memoranda, and case management duties. The work of the office concentrates on habeas corpus, prisoners' rights law, constitutional law, civil rights and employment discrimination, and applicants should have a demonstrated interest in these areas. Salary: approximately \$63,000-\$74,000. Applicants must forward a resume to Eileen F. Shapiro, Senior Staff Attorney, U.S. Court of Appeals, Second Circuit, 40 Foley Square, New York, NY 10007. Applications for this position will be accepted until **May 1, 1996**.

EQUAL OPPORTUNITY EMPLOYERS

Enhanced CHASER Offers New Features

U.S. district court users of CHASER (Chambers Access to Sealed Electronic Records) can now generate three new criminal case reports, thanks to the release of an enhanced version of the chambers case management system.

CHASER, which was developed by the Administrative Office, lets judges or chambers staff call up individual cases and view electronically stored docket sheets. It also allows users to obtain lists of cases or motions pending, sorted, and indexed in a variety of ways. The latest enhancement permits users to generate Criminal Pending Motions reports, Criminal Referred Motions reports, and Criminal Cases/Defendants Reports. And while CHASER always has provided selection screens for case filing dates, nature of suit codes, or cause of action to make the query process user-friendly, the new release gives the user more options by providing a wider variety of selection criteria. Improvements to menu entry and navigation also have made the system easier to use. As in the past, reports are ready within minutes and, at the

user's option, may be either displayed on the screen, printed, or saved in an electronic file.

Presently, 90 district courts use CHASER. The chambers case management system was first installed in eight district courts in 1992, but Judiciary-wide fiscal constraints halted expansion. However, the growing availability of 486-processors in courts nationwide provided a cost-effective means of delivering CHASER to district courts, and CHASER's design was revised to allow the system to work with the newly installed 486s.

Further enhancements to CHASER for the district courts are planned and may include several more criminal case reports and a calendar feature. This version is expected later this year or in early 1997. A similar chambers case management system also is being developed for bankruptcy courts and will be available later this year.

For additional information on the CHASER application, contact Cecilee Goldberg in the AO's Office of Judges Programs at (202) 273-1804.

Bankruptcy Bill Marked Up in House

The House Judiciary Committee Subcommittee on Commercial and Administrative Law has marked up H.R. 2604 and referred the bill to the full committee. The bill would create five permanent bankruptcy judgeships and six temporary bankruptcy judgeships.

The District of Maryland would receive one permanent bankruptcy judgeship, and the Central District of California would receive four permanent judgeships.

The Southern District of Florida, the Eastern District of Michigan, the District of New Jersey, the Eastern and Northern Districts of New York, and the Eastern District of Pennsylvania would each receive one temporary bankruptcy judgeship. In these districts, the first vacancy occurring in the office of a bankruptcy judge, which occurs five years or more after the appointment date of a judge, under this legislation shall not be filled.

The Judicial Conference supports the legislation and has testified in favor of it.

Marshals Service Helps Judges Assess Home Security Needs

The U.S. Marshals Service (USMS), which by law is tasked with the protection of the federal Judiciary, now is offering to provide judges with residential security appraisals. Upon their request, judges can have a USMS representative conduct a physical security survey of their home, after which they will receive a report on steps they can take to improve their home security. A 1994 General Accounting Office report on judicial security noted that a truly comprehensive judicial se-

curity program needs to consider and evaluate off-site as well as on-site security needs." The USMS's residential assessment may recommend low- to high-tech improvements. While marshals can provide a list of vendors experienced in installing residential security systems nationwide, they are just as apt to recommend that tall bushes be trimmed from around the house, that outdoor lighting be installed to improve detection of unwanted visitors, or that door locks be upgraded.

In addition, cellular phones, or wireless voice communication, are available to judges and court personnel. Administrative Office Director Leonidas Ralph Mecham said, "I have been advised by the U.S. Marshals Service that the single most effective enhancement of security for federal judges outside of the courthouse is access to instant communication through cellular phones or other wireless voice communication with the Marshals Service or other law enforcement officers."

Siegel Honored With Director's Award



Karen K. Siegel

Karen K. Siegel, assistant director for the Office of the Judicial Conference Executive Secretariat at the Administrative Office, is the recipient of the Director's Distinguished Ser-

vice Award. Presentation of the award was made last month by AO Director Leonidas Ralph Mecham at a meeting of the agency's senior staff. It is the AO's highest executive level award and has been given only four times in the last decade.

The award recognizes Siegel's professional achievements and her exceptional service to the AO since 1982, the year she joined the AO as special assistant to the deputy director. Siegel has headed the Executive Secretariat since 1987. The award cites her commitment to excellence combined with a personal warmth and spirit, noting also that, "It is because of Karen's expertise, the breadth of her institutional knowledge, her attention to detail and her extraordinary intellectual ability that the Director can be confident that the Judicial Conference committee staff work is of the highest caliber."

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JUDICIAL MILESTONES

Appointed: Bruce D. Black, as U.S. District Judge, U.S. District Court for the District of New Mexico, January 18.

Appointed: Patrick Michael Duffy, as U.S. District Judge, U.S. District Court for the District of South Carolina, December 27.

Appointed: James G. Glazebrook, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Florida, February 1.

Appointed: Barbara S. Jones, as U.S. District Judge, U.S. District Court for the Southern District of New York, January 22.

Appointed: Stephen M. Orlofsky, as U.S. District Judge, U.S. District Court for the District of New Jersey, February 5.

Elevated: Bankruptcy Judge Bernice Bouie Donald, to U.S. District Judge, U.S. District Court for the Western District of Tennessee, January 22.

Elevated: Judge Proctor Hug, to Chief Judge, U.S. Court of Appeals for the Ninth Circuit, succeeding Chief Judge J. Clifford Wallace, March 2.

Elevated: Bankruptcy Judge Bernard Markovitz, to Chief

Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Pennsylvania, succeeding Chief Bankruptcy Judge Warren W. Bent, January 8.

Resigned: Magistrate Judge Ann Yalman, U.S. District Court for the District of New Mexico, January 31.

Senior Status: Chief Judge Paul G. Hatfield, U.S. District Court for the District of Montana, February 9.

Senior Status: Judge Cecil F. Pool, U.S. Court of Appeals for the Ninth Circuit, January 15.

Cuba Legislation Impacts Federal Courts

Congress has passed a bill that would open federal courts to a civil remedy for property confiscated from U.S. nationals by the Cuban government. The legislation was signed into law on March 12, 1996. The Judicial Conference has not taken a position on the Cuba measure.

The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act provides that any person who traffics in property confiscated by the Cuban government, shall be liable to the national who owns the claim to such property in an amount equal to the value of the property, plus interest, court costs and reasonable attorneys' fees. To bring the action in federal court, the claim must meet a \$100,000 amount in controversy threshold, exclusive of interest. U.S. nationals are defined as U.S. citizens, any other legal entity organized under the laws of the United States, any state, and which has its principal place of business in the U.S.

According to the conference report, the purpose of this civil remedy is, in part, to discourage persons and companies from engaging in commercial transactions involving confiscated property, and in so doing, to deny the Cuban government capital generated by such ventures.

It is anticipated that the legislation will bring a significant number of new filings into federal courts, including at least some of the 5,911 claims currently pending before the Foreign Claims Settlement Commission (FCSC). The bill permits individuals who were not U.S. citizens at the time the property was confiscated to file claims under this new civil cause of action. However, U.S. nationals who were eligible to file a claim with the FCSC and failed to do so, or who were previously denied certification by the FCSC, are precluded from filing suit under this new civil action.

The effective date of the Title III provision is August 1, 1996, with an

additional 3-month waiting period. However, individuals who were not eligible to file claims with the FCSC, but are eligible to file Title III actions, may not bring such actions before the end of the 2-year period beginning on the date of the enactment of the act.

Additionally, the legislation permits courts to appoint a special master to make determinations on the amount and ownership of a claim, and provides that the Judicial Conference shall establish a uniform fee to be imposed upon the plaintiff or plaintiffs in each action to recover the costs to the courts.

The President will have the authority to suspend the effective date under specific conditions, although the conferees on the legislation indicate that it is their view that, under current circumstances, the President could not in good faith meet the criteria for suspension. It is not expected that there will be any impact on judicial resources until FY 97.

David J. Barram Tapped to Head GSA

David J. Barram, former deputy secretary of commerce, is the new acting administrator of the General Services Administration (GSA). Barram succeeds Roger Johnson, who resigned March 1, 1996. President Clinton announced his intention to nominate Barram as administrator last month.

Barram is a businessman who comes to the GSA with extensive experience in the private sector, mainly with high technology firms such as Hewlett-Packard, Apple, and Silicon Graphics. He has been deputy secretary of commerce at the U.S. Department of Commerce since 1993. He is a member of the

President's Management Council, and chaired the task force that developed the U.S. Business Advisor, a state-of-the-art electronic connection between American business and government.

"GSA is one of the places where government can and should use good business practices," said Barram, "like a strong emphasis on customer service and efficiency. Under Roger Johnson, GSA has become a leader in the new culture of constant reinvention that must exist in all of America's organizations. I am eager to carry on that mission."

JUDICIAL BOXSCORE

As of March 1, 1996

Courts of Appeals	
Vacancies	12
Nominees	6
District Courts	
Vacancies	41
Nominees	24
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	15

ABA President Roberta Cooper Ramo Pursues Multiple Goals

The current president of the American Bar Association, Roberta Cooper Ramo, has practiced law since 1967, concentrating her practice in the areas of business law, real estate, and health law. She is a shareholder in the Albuquerque, New Mexico, law firm of Modrall, Sperling, Roehl, Harris and Sisk.

Q: As ABA president, what were your goals as you took office?

A: You run for the presidency of the ABA with a certain set of goals you hope to achieve. You arrive and find challenges you never anticipated. In my case, that was definitely true when I ran. It never occurred to me I would be fighting for the survival of the Legal Services Corporation or facing 118 amendments to the Constitution that have been introduced in the U.S. Congress, among which was one to do away with lifetime tenure of federal judges.

I still hope to make the ABA far more friendly to its members, so that every person who joins the ABA is a better lawyer or judge for having done so. I'm anxious to emphasize that we need many more judges in the ABA. We're very lucky right now because we have on our board of governors Marvin E. Aspen, who is the chief judge in the Northern District of Illinois. And Judge Deanell Tacha is the chair of the Judicial Administration Division. Their perspectives have been important in a variety of ways.

Another area that is important to me is the negative view many Americans have of lawyers and the law. This is a product of the public's

poor education about the judicial system. I'm also interested in the issue of domestic violence. I've found that victims of domestic violence in many parts of our country are very poorly treated, and the problem is so complex that it requires a very broad social contract among all professionals, including physicians, police, social workers, and lawyers.

gress about how important it is to make sure that everyone understands and respects the lines between the three branches of government.

Q: The ABA was particularly supportive of the federal Judiciary's FY 96 appropriation. Could you tell us about your efforts

"We are committed to doing everything we can to make sure the federal Judiciary and state court judges are paid enough so that we can get good people to come to the bench and to stay on the bench."

Q: At the recent mid-year meeting of the ABA's House of Delegates, were there resolutions passed of particular interest to the federal Judiciary?

A: We passed a resolution that says, "Resolved that the American Bar Association opposes Congressional initiatives that infringe upon the separation of powers between the Congress and the courts and has the potential to inhibit the independence of the Judiciary." I don't think any of us ever thought we would be faced with a situation in which having a specific policy on that very basic part of democratic life in the United States would be necessary. But we were concerned about Senator Grassley's questionnaire, and, based upon the Chief Justice's response, the ABA felt that it was important to express itself clearly, which the House of Delegates did in a unanimous vote. The vote gives us far more effective lobbying power in talking to Con-

A: I believe no one had thought through the impact of closing the courts, the impact of having accused felons let loose because of the Speedy Trial Act. The ABA could point out to Congress the enormous negative implications of what Congress was doing. There was an immediate response, and I was appreciative, as were the federal judges.

Q: As we've seen this past year, high profile cases test the court system. Is there anything the ABA is doing to assist participants in these types of cases in federal courts?

A: We have established a marvelous new mentor program, chaired by Judge William M. Hoever of the District Court for the Southern District of Florida. We've pulled together first rate people who have been involved in cases where there was enormous media interest. They serve as an

visory group for judges and lawyers who find themselves in similar situations. These cases are not only legally important cases, but also cases that are high profile within a district.

On Judge Hoeveler's committee are South Carolina Circuit Court Judge William L. Howard Sr., who presided in the Susan Smith case; E. Michael McCann, the prosecutor in the Jeffrey Dahmer case and the immediate past chair of the ABA Criminal Justice Section; Linda A. Weinstein, a Manhattan prosecutor who heads the sex crimes unit of the district attorney's office; federal prosecutor Eric H. Holder Jr.; Barry Leck, a defense lawyer; Neal R. Tink, defense lawyer in the Freiga case and other high profile cases; Bruce D. Collins, general counsel for C-SPAN; and Nan R. Han, who represented a man on death row in Illinois for 12 years and proved someone else had actually committed the crime. In addition, we have two ethics experts, Jeffrey Hazard, the head of the American Law Institute and a faculty member of the University of Pennsylvania; and Burnele V. Howell, the past chair of the ABA Standing Committee on Professional Discipline and dean of the School of Law, University of Missouri at Kansas City.

They are not going to consult on facts of the case or the law, but Judge Hoeveler will put together on a confidential basis a team who can talk to the judge and the lawyers involved in the case and help them with some of the issues. They can meet as a group or, if they're more comfortable, individually. The group will be putting together a set of guidelines, but they're available for help right now.

Q: The ABA's Standing Committee on the Federal Judiciary reviews every federal judicial



Roberta Cooper Ramo

nominee. What are some of the problems or issues the committee has faced, and will face as the 104th Congress ends and a presidential election begins?


A: At our mid-year meeting, we had a superb day-long program on the federal judicial nomination process and the qualities we need to be looking for in federal judges who will be sitting in the next century. For the program, we had Republicans and Democrats, people who had been in the White Houses since the Kennedy Administration, people who had worked for the Senate Judiciary Committee, and Supreme Court reporters. At the end of the day, everyone agreed that, with probably one exception, the process works very well. And the exception was that it seemed to take too long, particularly for the district judge slots, where often we have people left hanging for over a year.

It is not the ABA committee that takes long. We do our work in 30 days unless there is a problem, in which case we notify everybody and occasionally it takes another 30 days. I think the ABA committee works superbly. Although people raise questions from time to time, I cannot imagine that the American

public does not want to know how the profession views a judicial nominee who will have lifetime tenure on the federal bench. I believe the committee behaves in a fair way and that the reporting is appropriate. It is appropriate to look at the committee's criteria from time to time.

My personal view is that in putting together nominations for our courts of appeals and the Supreme Court, it is very important that those courts really are the people's court in the sense that there not be a requirement that you be a federal judge to advance. I think that it is important to have people who've had district court experience, but I long for the day when we also elevate directly to those benches, lawyers who've been in private practice. It happens occasionally, and it is a very important voice that needs to be heard on those courts.

Q: Federal judges have not received a pay raise in three years. Is the ABA concerned about how this impacts the courts?

A: Absolutely. We are committed to doing everything we can to make sure the federal Judiciary and state court judges are paid enough so that we can get good people to come to the bench and to stay on the bench. I've written Senator Heflin to encourage him in separating pay raises for the federal Judiciary from Congress' so that the cost-of-living raises, which the rest of the federal government gets, will be given to judges. The ABA is 100 percent behind making sure that at the least federal judges get cost-of-living raises. 

Gilchrest and Committee Chairs Discuss Courthouse Construction



(L to R) Judge Owen Forrester (N.D. Ga.), chair of the Judicial Conference Committee on Automation and Technology; Representative Wayne T. Gilchrest (R-MD); and Judge Robert E. Cowen (3d Cir.), chair of the Conference Committee on Security, Space and Facilities, recently met on Capitol Hill to discuss federal courthouse construction. Representative Gilchrest is chair of the House Committee on Transportation and Infrastructure's Subcommittee on Public Buildings and Economic Development.

THE THIRD BRANCH

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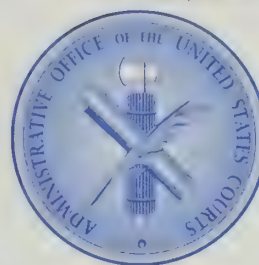
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THIRTEENTH BRANCH

Newsletter
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April 1996



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Conference Acts on Cameras in Courts

LAW LIBRARY



Judicial Conference honored the members of its Long Range Planning Committee at a reception held at the Supreme Court. They are (L to R) Judge Wilfred Feinberg (2d Cir.); Judge Sarah Evans Barker (S.D. Ind.); Judge Elmo B. Hunter (W.D. Mo.); Bankruptcy Judge A. Thomas Small (E.D. N.C.); Judge Otto R. Skopil, Jr. (9th Cir.), chair of the committee; Judge Harlington Wood, Jr. (7th Cir.); Judge Edward R. Becker (3d Cir.); Judge Lawrence King (S.D. Fla.); and Magistrate Judge Virginia M. Morgan (E.D. Mich.).

The Judicial Conference last month approved a resolution stating "Each court of appeals may decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, or such guidelines as the Conference may adopt." In addition, the Conference voted

to strongly urge each circuit judicial council to adopt pursuant to 28 U.S.C. § 332(d)(1) an order reflecting the Conference's September 1994 decision not to permit the taking of photographs and radio and television coverage of proceedings in U.S. district courts. The Conference also voted to strongly urge circuit judicial councils to abrogate any local

See *Conference* on page 2

Oklahoma City Remembers

April 19 will be much different than last year in Oklahoma City. There will be no emergency rescue crews, or ambulances, or fire-fighters. No one looking for a lost family member or friend. No sirens or smoke. On April 19, the members of the Oklahoma City court family will gather with the families of victims and survivors for a memorial service where the Alfred P. Murrah Building once stood to commemorate a day, exactly a year ago, when a bomb destroyed the building and shook the entire nation.

"The court is functioning as normally as ever, and we're pulling together, working hard," said Chief Judge David L. Russell (W.D. Okla.). "But that doesn't mean we aren't aware of the tragedy. It looks like Beirut out the courthouse's north-facing windows. We see the boarded up buildings, the Murrah Building site. They are a stark reminder of a very traumatic event."

Located across a plaza from the Murrah Building, the courthouse and the Old U.S. Post Office Building just behind the courthouse, sustained no major structural damage from the blast that destroyed the federal building a year ago. At the

See *Oklahoma City* on page 6

SIDE

Line Item Veto Raises Concerns for Judiciary	4
House Hearings Held on Courts Improvement Act	5
Bankruptcy Filings Increase in 1995	9

Conference continued from page 1
rules of court that conflict with this decision, pursuant to 28 U.S.C. § 2071(c)(1).

At its September 1990 session, the Judicial Conference established a cameras in court pilot program for civil cases only in two courts of appeals and six district courts. At its September 1994 meeting, the Conference declined to expand the experiment, citing the intimidating effects cameras may have on some witnesses and jurors. The cameras in court pilot program concluded on December 31, 1994.

In other action, the Conference:

- Agreed to reduce the 75 cents per minute fee for electronic public access to court data to 60 cents per minute. In the federal Judiciary's 1990 appropriations act, Congress directed the Judicial Conference to prescribe and collect fees for access to information available through automatic data processing equipment. The law further requires that the fees be used to pay for the expenses incurred in providing electronic public access services. At its March 1991 meeting, the Conference established a fee of \$1 per minute. In March 1995, the Conference reduced the fee to 75 cents per minute.

- Endorsed videoconferencing as a viable optional case management tool in civil prisoner rights pretrial proceedings, and authorized the expenditure of funds to expand the videoconferencing program of such cases in district courts that meet established criteria. In recent years, the Conference has endorsed the use of videoconferencing technology to reduce cost and delay in civil proceedings. The Eastern District of Texas, the Western District of Missouri, and the Middle District of Louisiana have been using videoconferencing for prisoner civil rights proceedings, and the Western District of Texas has used videoconferencing to conduct certain routine bankruptcy proceed-

ings. Overall, the pilot programs were considered a success by the participating judges and courts, and demonstrated that videoconferencing has the potential to offer net benefits to courts, depending on workload and business practices.

- Authorized the transmittal to Congress of a request to convert temporary judgeships to permanent judgeships in the Northern District of New York, Eastern District of Virginia, Southern District of Illinois, Eastern District of California, and Northern District of Alabama. The Conference also authorized transmittal to Congress of a request to extend the temporary judgeships for five years in the Northern District of Ohio, Central District of Illinois, Eastern District of Missouri, District of Nebraska, District of Hawaii, and District of Kansas.

- Agreed to include in its biennial survey of judgeship needs, reviews of the need to eliminate judgeship positions or leave judgeships unfilled, and communicate to Congress any recommendations regarding eliminations along with requests for additional judgeships. The Conference also voted to urge Congress to continue filling vacancies as they occur and act on judgeship requirements—including the need to increase or decrease the number—as a total package. In January 1995, the Conference transmitted to Congress draft legislation to create 20 additional temporary court of appeals judgeships, and 18 permanent and five temporary district court judgeships.

- Adopted a courthouse rent reduction and cost containment plan. Rent costs account for a significant and growing portion of Judiciary expenditures. In FY 96 the Judiciary will pay more than \$500 million—19 percent of its Salaries and Expenses appropriation—to the General Services Administration for rent. If rent payments continue to increase, the

Judiciary will be unable to afford to fund the courts at already reduced personnel levels and also pay its rent. The space plan was developed by the Conference's Committee on Security, Space and Facilities in conjunction with its Budget Committee's Economy Subcommittee, judges, and court advisory groups. Among the provisions contained in the plan are limit on the percentage increase in growth in rental costs; a ceiling on the amount of space occupied throughout each circuit; and a re-evaluation of all projects, including courthouses now being designed or under construction, to determine if space currently planned can be deleted.

- Agreed to inform House and Senate leadership that proposed amendments pertaining to closed circuit televising of certain criminal proceedings, if enacted, should be modified to remove any prohibition relating to the expenditure of appropriated funds and that any requirement that courts order closed circuit televising of criminal proceedings should be made discretionary to the judge.

- Referred to its Criminal Law Committee the Attorney General's proposal for universal pretrial drug testing and instructed the committee to report back expeditiously to the Executive Committee, which was authorized to act for the Conference on the matter. In December 1995, President Clinton forwarded a memorandum to the Attorney General directing her to develop a "...universal policy providing for drug testing of all federal arrestees before decision are made on whether to release them into the community pending trial." In mid-February, the Attorney General sought input from the Judiciary. The proposal potentially would have a significant impact on the Judiciary's budget. While the issue is being studied further by the Criminal Law

See Conference on page

Reception Honors Long Range Planning Committee



(L to R) Chief Justice William H. Rehnquist, Judge Otto R. Skopil Jr. (9th Cir.), and AO Director Leonidas Ralph Mecham



(L to R) Chief Judges Stephanie Seymour (10th Cir.) and Juan R. Torruella (1st Cir.)



(L to R) Judge Joseph H. Rodriguez (D. N.J.), Judge Robert E. Cowen (3d Cir.), and Chief Judge John Garrett Penn (D. D.C.)



(L to R) Justice Antonin Scalia, Retired Justice Byron White, and Chief Judge Graham Evans Barker (S.D. Ind.), a member of the Long Range Planning Committee



(L to R) AO Director Leonidas Ralph Mecham and Long Range Planning Committee member Judge Elmo B. Hunter (W.D. Mo.)

Line Item Veto Legislation Raises Separation of Powers Concerns

With their spring recess just a few hours away, the House and Senate approved and sent to the President legislation that will give future Presidents the authority to exercise a line item veto. The President has said that he will sign the bill, which will not take effect until January 1997 and will sunset January 1, 2005. The version agreed to by Congress could impact the Judiciary's appropriation, despite concerns expressed by the Judicial Conference over the past year. Most recently, Administrative Office Director Leonidas Ralph Mecham wrote to congressional leaders suggesting that there may be constitutional implications if the President is given independent authority to make line item vetoes of the Judiciary's appropriations acts.

"The doctrine of separation of

powers recognizes the vital importance of protecting the Judiciary against interference from any President," Mecham wrote in his March 15, 1996, letter.

Mecham was reiterating the views expressed by Chief Judge Gilbert S. Merritt (6th Cir.), the chair of the Conference's Executive Committee. In January 1995, he had testified at a joint hearing of the Senate Governmental Affairs Committee and the House Committee on Government Reform and Oversight. Merritt, who noted that the Judiciary's appropriation represents 2 tenths of one percent of the entire federal budget, said that line item veto authority that includes the judicial branch, is a "serious threat to the even-handed administration of justice."

For nearly a year, the two houses

were unable to reconcile their differences in the legislation. An agreement among Republican leaders was reached last month. During final debate, Senator Robert C. Byrd (D-WV), a longtime opponent of the bill, urged caution. "The item veto bill would allow the President to rescind funds for all of the Judiciary except for the salaries of Article III judges," he said. "Anything else... is subject to recessions. Are these selections to be made solely for economy or savings, or could they be retaliations for court decisions the executive branch finds disappointing? Probably we could never know, but the appearance of executive punishment for unwelcome decisions would be ever with us."

Conference continued from page 2
Committee, the Administrative Office of the U.S. Courts will continue to work actively with other groups who are studying implementation of the proposal.


■ Agreed to write to the chairs of the House and Senate Appropriations subcommittees that oversee the Judiciary's budget to seek guidance on the use of appropriated funds to conduct gender bias studies in the courts. Specifically, the letters will state that subject to the disapproval of the congressional subcommittees, it is the intent of the Conference to fund the continuation of ongoing studies to their completion. Funds will not be provided for new studies. The Violent Crime Control and Law Enforcement Act of 1994 encouraged the circuit judicial councils to conduct studies of the instances, if any, of gender bias in their respective circuit.

■ Supported legislation to expand the "Rule of 80" to allow a judge to take senior status as early as age 60 with 20 years of service as an Article III judge. In addition, the Conference opposed legislation that would increase the workload certification requirement for all senior judges from 25 percent to 50 percent, because the Conference is unable to ascertain the impact of an increased workload certification requirement upon judges who are considering taking senior status. The Conference expressed no objection to legislation that would increase to 50 percent the workload certification requirement for judges who take senior status before age 65, and provides that when these judges reach age 65, the workload certification requirement would decrease from 50 percent to 25 percent.

■ Elected to the board of the Federal Judicial Center Judge Pasco M. Bowman II (8th Cir.), replacing Chief

Judge J. Harvie Wilkinson II (4th Cir.) and Judge Thomas F. Hogan (D. D.C.), replacing Judge Michael Telesca (W.D. N.Y.).

■ Approved a legislative proposal of the Long Range Planning Committee to place a magistrate judge on the Federal Judicial Center board, which already includes a bankruptcy judge. The Conference elects the FJC board members.

■ Adopted a resolution commemorating the twenty-fifth anniversary of the National Center for State Courts, noting, in part, that the center "has demonstrated an unfailing commitment to improve judicial federalism by strengthening communications, cooperation, and coordination between the state and federal courts..." 

Judges Testify in Support of Courts Improvement Legislation

Judicial Conference representatives last month told a House subcommittee of their support for the Federal Courts Improvement Act, H.R. 1989, which contains more than 100 provisions aimed at improving the administration, operation, and management of the federal courts. Representing the Conference at the hearing before the House Judiciary Subcommittee on Courts and Intellectual Property were Judge Stephen Anderson (10th Cir.), chair of the Committee on Federal-State Jurisdiction; Judge Emmett Cox (11th Cir.), chair of the Committee on Defender Services; and Judge Barefoot Sanders (N.D. Tex.), chair of the Committee on the Judicial Branch.

While subcommittee members generally were supportive of the legislation, some did express concern with specific provisions. Subcommittee Chair Carlos Moorhead (R-CA) noted that prior to introducing the bill, he deleted a section that would have repealed the bar against annual cost-of-living adjustments for judges unless specifically authorized by Congress. Moorhead said, "The reason I deleted this provision is because it is my impression that in the current budgetary environment, it is very unlikely that the Congress will be inclined to approve such a provision." Representatives Howard Coble (R-NC) and F. James Sensenbrenner (R-WI) expressed similar views. Moorhead acknowledged, however, that while the judiciary's position on this issue may not be wrong, the political realities of the day preclude it.

Moorhead also said that the subcommittee would pay special attention to a section of the legislation that would lower the "Rule of 80" age and service requirements to 60 plus 20 for judges taking senior status.

Among the other provisions in H.R. 1989 that were discussed at the



(L to R) Judge Emmett Cox (11th Cir.), Judge Stephen Anderson (10th Cir.), Judge Barefoot Sanders (N.D. Tex.), and Judge W. Earl Britt (E.D. N.C.) greet Representative Carlos Moorhead (R-CA) prior to the hearing.

hearing, was the proposed repeal of in-state plaintiff diversity jurisdiction. This jurisdiction allows a citizen to litigate in federal court a civil claim based on state law, even though the plaintiff is a citizen of the same state whose court system the plaintiff seeks to avoid. At present, approximately 31 percent of all new diversity filings—15,318—are filed by in-state plaintiffs.

H.R. 1989 provides for the creation of 13 new federal defender organizations, using a standard that would mandate the establishment of such offices in every district that has more than 200 appointments under the Criminal Justice Act. The 63 existing federal defender offices provide high quality representation in federal criminal proceedings, according to Cox. Defender organizations generally provide a higher quality of representation than panel attorneys because they employ attorneys who specialize full-time in federal criminal law, know the intricacies of the sentencing process, receive regular training, and are accustomed to dealing with the various components of the criminal justice system.

Other portions of the courts im-

provement bill deal with judicial financial administration; judicial process improvements; judicial personnel, administration, benefits, and protection; recommendations of the Federal Courts Study Committee; criminal justice amendments; and other miscellaneous provisions.

Also testifying at the House hearing was Judge W. Earl Britt, president of the Federal Judges Association. The association strongly supports removal of the judicial pay issue from the political arena by allowing judges to receive cost-of-living adjustments whenever economic conditions warrant an increase. Britt said that the association also endorses a reduction in the threshold entry age at which Article III judges may take senior status from 65 to 60. Representing the American Bar Association at the hearing was Michael F. Dolin, a member of the association's Federal Initiatives Task Force.

The Senate conducted a hearing on the judicial improvements bill last October. It is anticipated that Senator Charles Grassley (R-IA) will move the bill in mid- to late April.

Oklahoma City continued from page 1 courthouse and Post Office Building, windows were shattered and ceiling tiles and fixtures fell, damaging furniture and office equipment. Emergency repairs began almost immediately, and the court reopened in less than a week. A year later, some walls in the courthouse still show cracks, some ceilings are still out of alignment, but otherwise, there are few lingering signs of the damage.



parking is no longer permitted in courthouse garages. The Judiciary's court security appropriation also received \$16.64 million in 1995 supplemental funds. The money was used to ensure that occupants and visitors in court facilities are adequately protected through the use of screening and protection equipment and for court security officers.

One of the final vestiges of the bombing's aftermath was the closed

"The court is functioning as normally as ever, and we're pulling together, working hard."

—Chief Judge David L. Russell

Gradually, life is returning to normal. The parking garage connecting the courthouse to the federal building reopened after nearly 8 months. Although the garage was structurally sound, its lower levels filled with water after the blast. Many of the people who parked in the garage were in the federal building at the time of the explosion. On the day before the official reopening, to ease what might be a difficult experience, walking tours of the garage were given. On opening day, court unit executives were there to welcome employees back.


A Department of Justice/General Services Administration Vulnerability Analysis Report conducted in the wake of the bombing, has classified most federal courthouses as Level IV, the second highest ranking behind the White House and the Pentagon. As a result, along with many other security upgrades, public

4th Street between the U.S. Courthouse and the bulldozed lot where the Alfred P. Murrah Federal Building once stood. "There was some apprehension to reopening the street," said Robert Dennis, clerk of court. "But the reopening was very positive. We're closer to normalcy." Dennis was one of the fortunate ones. He was in the federal building at the time of the blast, but escaped serious injury.

Dennis knows the court has experienced a difficult time, and he is proud of the way court employees have reacted, both immediately after the blast and throughout the year. "It's remarkable how employees have handled it, that they were able to continue working after such a terrible thing," he said. In recent weeks there has also been the pressure of the preliminary hearings for the defendants in the Oklahoma City bombing trial. "Everyone responded

like professionals," said Dennis. "I'm very pleased that in this community and in this courthouse, families of the accused and families of victims and survivors stood in line together, rode the elevators together, and there was never an incident. I think it speaks well for our community."

One recent spring day, the Oklahoma City court family helped celebrate what would have been the birthday of a 14-month-old girl who had died in the bombing. Her mother, an employee in the clerk of court's office, invited families of victims and survivors to the Murrah Building site for cake and to release hundreds of helium balloons. Said Dennis, "Her mother said everybody knew when her daughter had died. She wanted to remind people that she had lived too."

And could such a tragedy ever occur again? A panel of experts addressed this question at a recent symposium on courthouse construction. Security issues have existed for years in construction guidelines, whether it be the landscaping, approaches, walls, or mechanicals, said Wade Belcher, the director of the General Services Administration's Building Technologies Division. "Security, if at all possible, must be transparent. A building may indeed be a fortress, but the public won't know it," said Belcher. "We have to admit that we can't guard against a lot of things, but we can make buildings as secure as reasonably possible." Don Tucker, then chief of the Administrative Office's Courts Security Office agreed, saying, "Nobody could have predicted what occurred last April 19 or that the location would be Oklahoma City. And, regrettably, nobody can predict what the future will hold. We can, however, do our best to anticipate and prepare so that the necessary security measures are in place to minimize the likelihood of such a tragedy occurring again." 

APRIL

- 22-23 Monday-Tuesday**
Advisory Committee on Evidence Rules
- 22-24 Monday-Wednesday**
Workshop for Judges of the Third Circuit
- 25-27 Thursday-Saturday**
Eleventh Circuit Conference
- 29-30 Monday-Tuesday**
Advisory Committee on Criminal Rules

MAY

- 1-3 Wednesday-Friday**
Workshop for Judges of the Seventh Circuit
- 5-8 Sunday-Wednesday**
Fifth Circuit Conference
- 6-8 Sunday-Wednesday**
Committee on Defender Services
- 20-22 Monday-Wednesday**
Workshop for Magistrate Judges of the Second, Sixth and Ninth Circuits
- 23 Thursday**
Federal Circuit Conference
- 29-31 Wednesday-Friday**
National Workshop for Bankruptcy Judges II

ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE, Supreme Court of the United States

Statutory position (28 U.S.C. § 677); reports to the Chief Justice and assists him in his nonadjudicatory responsibilities. Primary duties include role of senior court manager, assisting Chief Justice in the internal management of the Supreme Court with responsibilities for personnel, budget, information systems, public information, general organization policy and other administrative matters; assisting with matters involving the Judicial Conference of the United States, the Federal Judicial Center, the Administrative Office of the U.S. Courts, and the Smithsonian Institution; serving as the Chief Justice's liaison with the executive branch, Congress, and other state and private organizations involving the administration of justice; and assisting in drafting or editing speeches and articles. Applicants must have substantial familiarity with the federal judiciary, and at least seven years of relevant experience separately or in combination involving the practice of law, court administration or the management of complex organizations. A law degree is preferred. Position requires excellent communication and leadership skills as well as demonstrated administrative ability. Term: two years, renewable. Salary: to Executive Level IV. Send complete resume, listing work experience, educational background, additional activities, etc., to Supreme Court of the United States, 1 First Street, NE, Personnel Office, Room 3, Washington, D.C. 20543 by the close of business on **May 15, 1996**.

MAGISTRATE JUDGE, District of Colorado

Applications are being accepted for the position of Magistrate Judge in the District of Colorado. Applicants must be, and have been for at least 5 years, a member in good standing of the bar of the highest court of a state and have been engaged in the active practice of law for a period of at least five years (The court may consider substitute experience.); be competent to perform all the duties of the office; be committed to equal justice under the law; be capable of deliberation and decisiveness, be less than 70 years old; and not be related to a judge of the district court. Salary: \$122,912. Term: eight years. Application forms and the full public notice may be obtained from the Clerk of the District Court, James R. Manspeaker, Room C-145, 1929 Stout Street, Denver, CO 80294. Applications must be submitted only by potential nominees personally and must be received by **May 1, 1996**, at 5:00 p.m.

CLERK OF COURT, Northern District of Iowa

Applications are being accepted for the position of Clerk of Court for the U.S. Bankruptcy Court for the Northern District of Iowa. The Clerk functions as the court's chief administrative officer and is responsible for all aspects of its operation, including case processing, policy implementation and monitoring, training, long-range planning, budgeting, space and facilities, financial accounting, public relations, property and procurement, and management of a staff of 17. The Clerk is also responsible for developing and maintaining a broad range of automation applications. The Clerk serves as the court's liaison to the public, the bar, and other governmental agencies. The official duty station is Cedar Rapids, Iowa, with a division of the court in Sioux City. Applicants must possess a minimum of ten years of progressively responsible management experience. Prior court experience is highly desirable. The position carries a target grade of 16 (\$84,635-\$110,023). Persons interested must submit four copies of form SF 171 or detailed resume and salary history to William L. Edmonds, Chief Judge, U.S. Bankruptcy Court, Federal Building, 320 Sixth Street, Sioux City, Iowa 51101. Applications must be received by the close of business on **May 31, 1996**, or until the position is filled.

EQUAL OPPORTUNITY EMPLOYERS

Campaign Season Brings Reminder of Political Prohibitions

With the presidential primary season nearly over and the campaign for president heating up, judicial employees may be wondering if they can get out and campaign for their favorite candidate. The answer, according to guidelines developed by the Judicial Conference's Committee on Codes of Conduct, is no. Partisan political activities, defined as activities for party organizations such as the Republican and Democratic National Committees and their state and local affiliates, are prohibited for all employees covered by the Code of Conduct for Judicial Employees.

The Codes of Conduct Committee recently issued Advisory Opinion 92, containing new guidelines for participation in political activi-

ties. The guidelines apply to all employees of the judicial branch except justices, judges, employees of the U.S. Supreme Court, the Administrative Office, the Federal Judicial Center, the Sentencing Commission, and Federal Public Defender offices. These latter groups have separate standards of conduct, most (but not all) of which contain similar prohibitions. Employees in these offices should consult their supervisors and review their applicable standards of conduct to determine whether and to what extent they may engage in political activities.

Judicial employees covered by the new guidelines should refrain from taking an active role in a partisan political organization; from becoming a candidate for a partisan politi-

cal office; from soliciting funds for or contributing to a partisan political organization, candidate or event; from initiating or circulating a nominating petition; and from participating in a campaign in support of, or in opposition to, a candidate in a partisan political election.

Employees should not publicly endorse a partisan political candidate. This includes making speeches; authorizing use of the employee's name as an endorsement; participating in a partisan political convention, caucus, rally, or fund-raising activity; and publicly displaying a campaign picture, sign, sticker, badge or button for a partisan political candidate or organization. A Judiciary employee may not act as a recorder, watcher, challenger, or similar officer at the polls in a partisan political election.

Some nonpartisan political activities also are prohibited for members of a judge's personal staff and certain court unit heads. For them, the prohibitions concerning partisan political activities generally apply to nonpartisan political activities as well.

Of course, all judicial employees may register and vote in any primary or general election, and they may register as a member of a political party. Employees are also entitled to voice, although privately, their opinions regarding a political candidate or party. Participation is allowed in the nonpolitical activities of a civic, charitable, religious, professional, educational, cultural, avocational, social, fraternal, or recreational organization as described in Canon 4 of the code.

Questions concerning activities not covered by the guidelines can be referred to the Committee on Codes of Conduct or the AO's Office of the General Counsel at (202) 272-1100.

Senate Establishes Appellate Commission

The Senate has approved S. 956, a bill that will establish a commission to review the structure of the federal courts of appeals. The legislation was adopted during a floor debate as a substitute for a bill sponsored by Senator Conrad Burns (MT) that would have split the Ninth Circuit and created a new Tenth Circuit. Burns and several other senators have been advocating a reorganization of the Ninth Circuit, citing its large size and caseload.

Judge J. Clifford Wallace (9th Cir.), who was chief judge of the circuit at the time, testified in opposition to the proposed split at a Senate hearing last year. Wallace indicated that the Ninth Circuit is strong and functioning well and that its size has many advantages. The bill that would split the Ninth Circuit was referred to the Senate floor for consideration by the Senate Judiciary Com-

mittee late last year. The legislation came up on the Senate floor last month when its proponents tried to attach it as an amendment to the latest fiscal year 1996 continuing resolution. When the amendment was ruled not relevant to the pending legislation, the commission bill was adopted as free-standing legislation.

The commission to study the courts of appeals would be composed of 11 members appointed by the President, the Senate Majority Leader, the Speaker of the House, and the Chief Justice. The legislation states that the commission shall transmit its report to Congress and the President no later than February 28, 1997, and that within 60 days of transmission, the Senate Judiciary Committee shall act on the report. The bill has been referred to the House Judiciary Committee.

JUDICIAL MILESTONES

Appointed: Susan K. Gauvey, as U.S. Magistrate Judge, U.S. District Court for the District of Maryland, February 26.

Appointed: Joan A. Lenard, as U.S. District Judge, U.S. District Court for the Southern District of Florida, March 1.

Appointed: Virginia A. Mathis, as U.S. Magistrate Judge, U.S. District Court for the District of Arizona, March 15.

Appointed: Morton Denlow, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Illinois, March 1.

Appointed: Richard L. Puglisi, as U.S. Magistrate Judge, U.S. District Court for the District of New Mexico, February 1.

Appointed: Jed S. Rakoff, as U.S. District Judge, U.S. District Court for the Southern District of New York, March 1.

Elevated: Bankruptcy Judge Louise DeCarl Adler, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of California, succeeding Chief Bankruptcy Judge James W. Meyers, January 2.

Elevated: Judge James H. Wilkinson III, to Chief Judge, U.S. Court of Appeals for the Fourth Circuit, succeeding Chief Judge Sam J. Ervin III, February 15.

Elevated: Bankruptcy Judge Robert L. Krechevsky, to Chief Judge, U.S. Bankruptcy Court for the District of Connecticut, February 29.

Elevated: Judge Jack O. Shanstrom, to Chief Judge, U.S. District Court for the District of Montana, succeeding Chief Judge Paul G. Hatfield, February 10.

Elevated: Judge Procter Hug Jr., to Chief Judge, U.S. Court of Appeals for the Ninth Circuit, succeeding Chief Judge J. Clifford Wallace, March 2.

Senior Status: Judge Stanley S. Harris, U.S. District Court for the District of Columbia, February 1.

Senior Status: Chief Judge Robert L. Vining Jr., U.S. District Court for the Northern District of Georgia, March 31.

Retired: Senior Judge Patrick F. Kelly, U.S. District Court for the District of Kansas, March 15.

Deceased: Senior Judge Aldon Anderson, U.S. District Court for the District of Utah, March 24.

Deceased: Senior Judge Luther B. Eubanks, U.S. District Court for the Western District of Oklahoma, January 21.

Deceased: Senior Judge Charles M. Merrill, U.S. Court of Appeals for the Ninth Circuit, March 29.

Deceased: Senior Judge Oliver Seth, U.S. Court of Appeals for the Tenth Circuit, March 27.

THIRD BRANCH

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Photo on page 12 by Franz Jantzen, Collection
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Please direct all inquiries and address
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above address.

JUDICIAL BOXSCORE

As of April 1, 1996

Courts of Appeals	
Vacancies	12
Nominees	8
District Courts	
Vacancies	43
Nominees	28
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	18

Cowen Considers Courthouse Construction and Security

Judge Robert E. Cowen (3d Cir.) is the chair of the Judicial Conference's Committee on Security, Space and Facilities. He was elevated to the Third Circuit in 1987, having previously served as a district judge in the U.S. District Court for the District of New Jersey from 1985 and as a magistrate judge from 1978 to 1985.

Q: What is the role of the Judicial Conference Committee on Security, Space and Facilities, and what are some of the issues it currently faces?

A: The committee works to provide judicial officers and staff with the facilities and security necessary to conduct judicial business. This includes helping to formulate a long-range facilities planning process for the Judiciary and working with Congress to support the Judiciary's housing requirements.

Congress is aware of the need for additional courthouses by reason of the mushrooming of the court docket. The overarching concern of Congress is that courthouses be built in locations where they are needed, and at a reasonable cost given the specialized nature of a courthouse building. In addition, the Congress is most interested that courthouses not be unduly ornate and that, while they convey the symbolism necessary for a proper projection of the judicial function, the building materials be functional without being luxurious.

Q: What is the Judiciary doing to ensure courthouses are constructed in the most effective and efficient manner possible?

A: All federal courthouses are actually built by the General Services Administration (GSA), for use by its tenant, the Judiciary. As the future tenant of any courthouse facility, we endeavor to work closely and cooperatively with GSA to ensure that the courthouse is configured and built to meet the specialized needs of the Judiciary. In that vein, we have promulgated a U.S. Courts Design Guide, a manual of guidelines concerning the most es-

command between us. As a GSA tenant, the Judiciary will pay over \$500 million to the GSA for space rental in 1996. The GSA also is the agency to which Congress provides funds in order to construct buildings, including courthouses. Congress authorizes the construction of courthouses in response to our request, and the Judiciary collaborates with the GSA on the location, design, and construction of the buildings.

"The overarching concern of Congress is that courthouses be built in locations where they are needed, and at a reasonable cost given the specialized nature of a courthouse building."

sential aspects of courthouse construction. The guide covers such points as the necessary square footage for courtrooms, chambers, and office space; the aesthetics of the courtroom, including the need for proper sight lines from the jury box, witness stand or judge's bench; and operational considerations, which are unique to buildings in which cases are adjudicated. We work closely with the U.S. Marshals Service (USMS) to pattern traffic flow in a courthouse in such a way that security is preserved for judicial staff, jurors, witnesses, litigants, prisoners, and members of the public, while the functionality and efficiency of the court is maintained.

Q: What is the relationship between the General Services Administration and the Judiciary?

A: The GSA is an agency of the executive branch of government. As such, there is no chain of

Q: What can the Judiciary expect in terms of new courthouse construction for fiscal years 1996 and 1997 and beyond?

A: First, some background information is necessary. Over a long period of time, there were very few courthouses constructed, since the jurisdiction of the federal courts was extremely limited, and the incremental growth that did occur in the Judiciary was spread over many years. In the last six years, however, federal courts have been called upon to handle an ever-increasing caseload, largely because of the federalization of many crimes which were previously considered solely state court matters. Congress also has legislated new causes of action, which previously just did not exist. To meet this surge of new case filings, the number of judicial officers in recent years also increased. It became necessary

engage in a program of courthouse construction, which virtually has no precedent in the history of the country. In the last several years, Congress has authorized approximately \$900 million per year for courthouse construction. We have been advised that in the coming years we should plan, by reason of budgetary constraints, to construct approximately \$500-\$600 million of court facilities.

Q: What space management initiatives has the committee taken in light of this belt tightening?

A: At its September 1995 meeting, the Conference directed the committee, along with the Budget Committee, to submit a plan for managing the overall growth of space and costs. The plan recommended by the committee was approved by the Conference at its March 1996 session. Ultimately, a cap is likely to be placed on the amount of square footage we request each year from the GSA.

We are working on a number of initiatives to control costs, including a fresh look at our design guide, and we are asking courts to develop a detailed inventory of the space they occupy. We also will be working with the GSA to reduce rent costs, and we hope to develop a system of incentives for courts releasing any space they currently occupy. The plan also asks circuit courts, which have certain statutory authorities in the space arena, to look at pending space requests from throughout the circuit to see if they can be reduced. Committees of the Conference will be looking at implications of issues of interest to the Congress, such as courtroom sharing, library needs, and the impact of technology on space requirements.

Q: In the wake of the Alfred P. Murrah Building bombing



Judge Robert E. Cowen


and continued threats to the safety of members of the Judiciary, what is or has been done to maintain security both in courthouses and off site?

A: Since the creation of the court security program in 1983, the Judiciary has strived to provide an enhanced level of facility security at buildings housing court operations. Following the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, the Department of Justice (DOJ) and the GSA conducted a security review of all government facilities. Their assessment of federal courthouses should lead to some additional enhancements, such as restricted parking around the building, controlled access to underground parking, perimeter security cameras, and after-hours security coverage where necessary. We are working closely with DOJ and the GSA to ensure that an appropriate level of security is provided at all court facilities. Each district has its own security committee that is responsible for developing a district-wide security program and for requesting the resources necessary to implement it. These committees should also be working with the local GSA representative on facility security enhancements. In addition, each court facility should have a cur-

rent Occupant Emergency Plan in place that outlines procedures to be followed in the event of a natural disaster or security problem.

Q: What can judges do concerning their own personal security, at the courthouse or in their private lives? Should judges consider carrying firearms?

A: After thorough review, it has been concluded that the safest place for any judge is in the courthouse. A judge is also fairly safe while at home. The USMS, upon request, will conduct a security survey of a judge's home. Probably the greatest exposure to danger is while going to or coming from the courthouse. We have asked judges to exercise extreme caution when driving their cars and to be alert.

When an individual assumes a position on the federal bench, security instantly becomes one of the most difficult issues for them to confront. Many practicing lawyers never gave much thought to their security or that of their family. But for federal judges it is a stark reality of their daily life. Fortunately, the USMS takes its role seriously and works closely with courts and judges throughout the country. But some judges feel the need to do more and as a result, have applied for and been granted licenses to carry firearms by the state in which they reside. Whether a judge desires to carry a firearm is an individual decision, which each judge must make, and the committee is not recommending action one way or the other. The committee has, however, recommended legislation presently before Congress that would permit a judge to obtain a federal license to carry a firearm. The DOJ had some objection to the absolute immunity provision which the draft bill contained, and the Committee consented to that provision being deleted from the bill. 

Judicial Conference Gathers in Washington for Biannual Meeting



Members of the Judicial Conference met in Washington, D.C. last month. They are (L to R, seated) Chief Judge Juan R. Torruella (1st Cir.); Chief Judge Jon O. Newman (2d Cir.); Chief Judge Dolores K. Sloviter (3d Cir.); Chief Judge J. Harvie Wilkinson III (4th Cir.); Chief Justice William H. Rehnquist; Chief Judge Henry A. Politz (5th Cir.); Chief Justice Gilbert S. Merritt (6th Cir.); Chief Judge Richard A. Posner (7th Cir.); Chief Judge Richard S. Arnold (8th Cir.); (Standing, second row) Chief Judge Joseph L. Tauro (D. Mass.); Judge W. Earl Britt, (E.D. N.C.); Chief Judge Wm. Matthew Byrne, Jr. (C.D. Calif.); Chief Judge Glenn L. Archer, Jr. (Fed. Cir.); Chief Judge Procter R. Hug, Jr. (9th Cir.); Chief Judge Gerald B. Tjoflat (11th Cir.); Chief Judge Harry T. Edwards (D.C. Cir.); Chief Judge Stephanie K. Seymour (10th Cir.); Judge Donald E. O'Brien (N.D. Iowa); Chief Judge Clarence A. Brimmer (D. Wyo.); (Standing, back row) Chief Judge William H. Barbour, Jr. (S.D. Miss.); Chief Judge Peter C. Dorsey (D. Conn.); Judge S. Arthur Spiegel (S.D. Ohio); Chief Judge Edward N. Cahn (E.D. Penn.); Chief Judge Michael M. Mihm (C.D. Ill.); Judge Wm. Terrell Hodges (M.D. Fla.); Chief Judge John G. Penn (D. D.C.); Chief Judge Dominick L. DiCarlo (Ct. Int'l Trade); Director Leonidas Ralph Mecham, Administrative Office of the U.S. Courts.

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FEDERAL DEPOSITORY

Judiciary Presents FY 97 Funding Request



(L to R) AO Director Leonidas Ralph Mecham and Chief Judge Richard S. Arnold (8th Cir.) were briefed prior to budget hearings in the Senate and the House.

A representative of the federal Judiciary asked Congress to provide the judicial branch with the same percent funding increase for fiscal year 1997 that has been requested by the Department of Justice—the primary litigant in federal court. The requested level for the operation of the federal court system in FY 97 is \$4.47 billion, which represents just two-tenths of one percent of the entire federal budget. The Judiciary is operating at an FY 96 level of \$3.05 billion.

"We have been successful in hold-

ing down our request by deferring or delaying expenses where possible, and by implementing a large number of management innovations, improvements, and economy measures," said Chief Judge Richard S. Arnold (8th Cir.), chair of the Judicial Conference's Budget Committee. "We believe our request is reasonable and consistent with the responsibilities we have been given by Congress and the resulting workload increase."

The requested funding level

See FY 97 on page 2

Newsletter
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Chief Justice Speaks on Independence

Calling an independent Judiciary "one of the crown jewels of our system of government," Chief Justice William H. Rehnquist in a speech last month said that it is important for the Judiciary to possess a degree of flexibility while also maintaining its independence.

"I have said that the Judiciary must change with the changing times," Rehnquist said at a forum on the Future of the Federal Courts. He added, "But there are a very few essentials that are vital to the functioning of the federal court system as we know it. Surely one of these essentials is the independence of the judges who sit on these courts."

The Chief Justice delivered the keynote address at a plenary session on the Future of the Federal Courts at the American University, Washington College of Law, which was celebrating its one hundredth anniversary. Participating in the plenary session were Judges Edward R. Becker (3rd Cir.) and Stephen Reinhardt (9th Cir.), Chief Judge Sarah Evans Barker (S.D. Ind.), and Charles W. Nihan, an adjunct professor at the law school.

In his speech, Rehnquist said that in trying to forecast the future

See Chief Justice on page 9

INSIDE

Antiterrorism Legislation Signed
Congress Urged to Create Bankruptcy Judgeships
Director's Awards Honor Court Employees

4
5
6

FY 97 continued from page 1

represents a 4 percent increase due to growth in workload and program needs. The Judiciary's remaining 10 percent increase results from uncontrollable inflationary increases, proposed pay adjustments, and other adjustments necessary to maintain ongoing programs.

Arnold testified last month before the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies. Accompanying him at the hearing were Judges Owen M. Panner (D. Or.) and William G. Young (D. Mass.), members of the Conference's Budget Committee; Leonidas Ralph Mecham, director of the Administrative Office; and Judge Rya W. Zobel (D. Mass.), director of the Federal Judicial Center. Earlier this month, Arnold, Panner, Mecham, and Zobel appeared before the Senate Appropriations Subcommittee on Justice, State, and the Judiciary.

In his testimony, Arnold provided the subcommittee with details on the various steps the judicial branch has undertaken to optimize its resources and reduce costs. "We have been very aggressive in taking advantage of innovative technologies and improved management techniques to reduce our cost of doing business," Arnold said. "Our cost-cutting efforts are widespread and cover all operational and program areas of the judicial branch." It is estimated that the efforts to enhance efficiency, increase productivity, and reduce costs in the federal courts will result in about \$750 million in cost avoidance and savings from fiscal years 1995 through 1997. The following are some highlights:

- A savings of approximately **\$160 million** was achieved by limiting the staffing of federal courts to 84 percent of the amount called for in staffing formulas.

- More conservative criteria have been used by the Judicial Con-

ference and the circuits to evaluate the need for new judgeships. For example, in FY 94, eight fewer district court judgeships were requested than would have been approved under the old criteria, potentially avoiding costs of about **\$6 million** a year.

- In the area of automation, **\$11 million** will be saved over four years by contracting out notice production and distribution services through the Bankruptcy Noticing Center. An additional **\$10 million** is saved annually through new approaches to funding the operation and maintenance of the automation program, such as initiatives to replace outdated, expensive-to-maintain equipment with new processors; switching to local rather than national maintenance of certain equipment; and other economizing measures.

- The federal probation and pretrial services home confinement program already is one of the most cost-effective operations in the federal government. On any given day, more than 4,000 individuals who otherwise would be confined in federal prison or some other detention facility are instead monitored in their homes. If all of these individuals were housed in federal facilities, it would cost the federal prison system between \$57 and \$88 million each year. Placing the same number of persons in the Judiciary's home confinement program costs approximately \$26 million. This amounts to a savings per year for taxpayers of **between \$31 and \$62 million**.

Arnold indicated that the small increase requested by the Judiciary for FY 97 results primarily from the key law enforcement role played by virtually all aspects of the judicial branch. "The Judiciary is an integral part of the criminal justice system, and as such, has a direct impact on public safety," he told the House subcommittee. "As Congress contin-

ues to expand the role of the Justice Department, it increases the caseload and workload in the courts, and the need for additional resources." For example, for FY 97, the Justice Department plans to increase the number of assistant U.S. attorneys by 7 percent, the number of DEA agents by 11.7 percent, and the number of border patrol agents by 38 percent.

Arnold also noted that the federal courts are in a unique position because unlike most federal agencies, which are downsizing, the Judiciary's workload is growing. "I need not remind you that the courts cannot refuse to accept cases," he said in his testimony. "Also, the Judiciary does not have the authority to handle only the 'highest' priority workload. Every case that is filed, whether criminal or civil, must be handled, and ultimately disposed of by the courts. Every indigent defendant charged in a criminal case must be provided court-appointed counsel. Every felon released from prison must be supervised, and all statutorily mandated drug testing must be performed." Among the proposed increases for FY 97 are the following:

- An increase of \$71.5 million for additional magistrate judges, and court of appeals, district court, and probation and pretrial services staff to handle anticipated workload increases. For example, the number of criminal cases is projected to grow by 6 percent and the number of offenders under probation supervision is expected to increase nearly 6 percent from FY 95 to FY 97.

- An increase of \$18.4 million for additional bankruptcy court staff to handle the large growth in bankruptcy case filings. This request, which was prepared several months ago, assumed increases of approximately 13 percent in such filings for FY 95 to FY 97. Actual filings are significantly greater thus far in FY 96—growing 23 percent when compared to the same period last year.

■ An increase of \$49 million to provide legal representation to defendants otherwise unable to afford counsel.

■ A proposed \$29 million increase in court security funding will help pay for additional court security officers, security equipment, and administrative support to meet the courts' most urgent requirements for security coverage in new court facilities.

Arnold concluded, "As long as we comply with our constitutional and statutory mandates, and as long as Congress and President continue to make fighting crime a high priority, our workload will increase. Unfortunately, despite our intense cost containment efforts, increased workload means increased costs."

Administrative Office

AO Director Leonidas Ralph Mecham requested a \$53 million appropriation for the agency, which has effectively had its funding frozen for the last four years, including this year. The requested appropriation allows for no new initiatives or programs, but would enable the AO to maintain its current level of operation and restore the staffing levels to that authorized in FY 95. Over the past ten years, total Judiciary staffing has grown 63 percent while direct-funded AO staff has grown by only 19 percent. Although authorized to have 685 employees, as of September 30, 1996, the AO will have sufficient funds to pay only 635. "The Administrative Office is unequal to any other agency in the federal government," Mecham said in his testimony. "It is not a Washington headquarters administrative overhead operation. It is a management and policy staff organization tasked with responsibilities integral to effective operation of the entire third branch."

Despite the AO's broad and increasing responsibilities, its appro-


priation, which ten years ago was just 2.8 percent of the Judiciary's budget, currently has been reduced to only 1.6 percent. This 1.6 percent contrasts with similar Justice Department management and administration accounts, where the FBI spend 4.7 percent of its appropriation for management and administration; the Immigration and Naturalization Service, 7.6 percent; and the Drug Enforcement Administration, 9 percent.

If the funding level is not restored, Mecham said, "In the long term, the reduced staffing levels under which we will be operating by the end of FY 1996, will not allow the AO to continue both our core administrative/law enforcement support of the courts and our ongoing economy and efficiency efforts." Mecham also said the AO will have difficulty providing service to the Judicial Conference and its 25 committees, and is already being pressed to maintain its

role in spearheading economy efforts throughout the courts.

Federal Judicial Center

FJC Director Judge Rya W. Zobel requested an FY 97 funding level of \$19.6 million, or a 9.6 percent increase over FY 96. The FJC's appropriation has declined by 5.2 percent from FY 92 to FY 96. Nevertheless, Zobel said, the FJC has been able to increase the total number of judges and supporting personnel who have received orientation and training. In order to do so, Zobel said that the FJC has offset the reductions in appropriated funds by reducing its workforce by 10 percent and continuing its growing reliance on alternatives to travel-based education.

"Although we have been doing more with less, we have reached the limits of our ability to sustain education, training, and research programs with a declining appropriation," Zobel said. 

Judiciary Appropriations (In Thousands)

Account	FY 96 Enacted	FY 97 Request
Supreme Court		
Salaries & Expenses	\$25,834	\$27,157
Building & Grounds	3,313	3,313
Federal Circuit	14,288	15,978
Court of International Trade	10,859	11,114
Courts of Appeals, District Courts and other Judicial Services:		
Salaries & Expenses	2,433,141	2,747,346
Defender Services	267,217	318,905
Fees of Jurors	59,028	68,083
Court Security	102,000	131,885
Administrative Office	47,500	53,523
Federal Judicial Center	17,914	19,625
Judiciary Trust Funds	32,900	30,200
Sentencing Commission	8,500	9,200
Crime Trust Fund	30,000	35,000
Total Judiciary	\$3,052,494	\$3,471,329

New Antiterrorism Law Contains Habeas Reform and Victim Restitution

The reverberations of the bombing in Oklahoma City are being felt a year later in Congress, where legislation to counter international and domestic terrorism recently was passed. The President signed the bill into law as P. L. 104-132 on April 24. The Antiterrorism and Effective Death Penalty Act of 1996 contains many provisions of interest to the federal Judiciary, in particular those dealing with habeas corpus reform and mandatory restitution. The following are highlights of the new law.

Habeas Corpus Reform

The habeas corpus provisions of the bill significantly change procedures for both state and federal prisoners. Both capital and non-capital cases are affected by provisions that, among other things, create one-year deadlines for filing habeas petitions, limit successive petitions, and generally restrict the review of state prisoner petitions if the claim was adjudicated on the merits in the state courts. A "certificate of appealability" also is required before a habeas petition by a state or federal prisoner can be appealed to a federal court of appeals.

The new law establishes special habeas corpus procedures for capital cases in states with mechanisms for the appointment, compensation, and payment of reasonable litigation expenses of counsel in state post-conviction proceedings brought by indigent prisoners. The special procedures also establish a 180-day time frame in which a petitioner must file a habeas petition; restrict the scope of federal review; limit successive petitions; and place time limitations on the district courts and courts of appeals to decide habeas petitions.

Mandatory Victim Restitution

The mandatory victim restitution

provisions of the bill require a federal court to impose mandatory restitution, without consideration of the defendant's ability to pay. This applies in any case in which an identifiable victim or victims suffered physical or pecuniary loss from an offense that is a crime of violence, an offense against property (including any offense committed by fraud or deceit), or a crime related to tampering with consumer products. Last year, Judge Maryanne Trump Barry (D. N.J.), chair of the Judicial Conference Committee on Criminal Law, testified before Congress on the issue of mandatory restitution, pointing out that such legislation would replace a flexible system, based on common sense and judicial discretion, with an inflexible, mandatory system that would be extremely expensive to implement.

Closed Circuit Televised Proceedings for Victims of Crime

Another provision in the bill requires a federal trial court, in any criminal trial where the venue is changed from the state in which the case was originally brought and more than 350 miles from the location in which those proceedings originally would have taken place, to order closed circuit televising of the proceedings back to the original location. The televised coverage is to be provided for such persons the court determines have a compelling interest and who are otherwise—because of inconvenience or expense—unable to attend the trial.

The provision takes effect notwithstanding any contrary provision of the Federal Rules of Criminal Procedure, although there is a sunset mechanism. The Judicial Conference may promulgate and issue rules, or amend existing rules, to "effectuate the policy addressed by this section." Upon implementation of such

rules, the closed circuit television provision ceases to be effective. The cost of such closed circuit proceedings will be paid for by appropriated funds and/or through donations.

Other Provisions

Among other provisions in the bill are those that:

- Create an Alien Terrorist Removal Court composed of five sitting U.S. district judges designated by the Chief Justice;

- Expand the definition of an aggravated felony under which aliens may be deported, and streamline the deportation of criminal aliens after they serve their sentences;

- Create a five-member Commission on the Advancement of Federal Law Enforcement to study criminal law enforcement, the chair of which will be appointed by the Chief Justice;

- Authorize appropriations for the Judiciary of \$41 million from the Crime Trust Fund from fiscal year 1997 to FY 2000 to help meet the increased demands for judicial branch activities resulting from enactment of the bill;

- Set compensation for court-appointed attorneys in capital cases at a rate of not more than \$125 per hour for in-court and out-of-court time, but also authorize the Judicial Conference to increase the rate of compensation in the future under a "CPI escalator" mechanism;

- Cap fees and expenses paid for investigative and expert services in capital cases at \$7,500, but provide for a waiver mechanism whereby such expenses can exceed that cap if the excess payment is certified by the court as necessary to provide fair compensation for services of an unusual character or duration and if the amount of the excess payment is approved by the chief judge of the circuit.

Conference Urges Creation of New Bankruptcy Judgeships

Despite the use of various case processing and management innovations, the need to create new bankruptcy judgeships is both "acute and longstanding," a representative of the Judicial Conference told a Senate subcommittee last month.

"We are not just asking our bankruptcy judges to do more—we are requiring it," said Chief Judge Paul A. Magnuson (D. Minn.), chair of the Conference's Committee on Administration of the Bankruptcy System. "We will continue to seek ways to improve the bankruptcy system's efficiency, but we need eleven additional bankruptcy judges. The need is both acute and longstanding."

Magnuson testified before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts. Bankruptcy filings are sharply increasing. Filings for the fourth quarter of 1995 were 21 percent higher than in the fourth quarter of 1994. The level of consumer debt is at an all-time high, and all indicators suggest that the growth in bankruptcy filings will continue.

H.R. 2604, the Bankruptcy Judgeship Act of 1995, was introduced in the House last November and would create four permanent bankruptcy judgeships in the Central District of California and one permanent bankruptcy judgeship in the District of Maryland. One temporary judgeship could be created in each of the following districts: the Southern District of Florida, the Eastern District of Michigan, the District of New Jersey, the Eastern District of New York, the Northern District of New York, and the Eastern District of Pennsylvania. The six temporary judgeships that could be created under the legislation, the first bankruptcy judgeship vacancy (other than expiration of a term) in the district occurring five years or more after a judge has been appointed to the temporary judge-



Prior to the hearing, Senator Charles Grassley (R-IA) greets Chief Judge Paul A. Magnuson (D. Minn.) and Bankruptcy Judge William E. Anderson (W.D. Va.) of the National Conference of Bankruptcy Judges.

ship would not be filled.

The House Judiciary Subcommittee on Commercial and Administrative Law conducted a hearing on the bill last December, and marked up and referred the legislation to the full committee in February, which approved the bill on March 14.

At the Senate hearing, Senator Charles Grassley (R-IA), the subcommittee's chair, questioned if the Judiciary was looking at long-term needs for bankruptcy judgeships, if the number of judges would eventually be limited, and if courts were making use of intercircuit transfers to deal with disparate caseloads.

Magnuson's responded that the Judiciary continues to explore avenues other than requesting new judgeships to meet the resource needs of the bankruptcy courts. Among the management tools and processes currently being used are the recall program, in which retired bankruptcy judges serve on a full-time or part-time basis; shared positions, which allow the needs of two districts to be met while avoiding the cost of an additional judgeship; inter- and intra-circuit assignments, which provide short-term solutions

to districts with disparate caseloads; cross designation, which allows designation of a bankruptcy judge to an adjacent or nearby district; additional law clerks, who provide bankruptcy judges with additional research assistance and allow an initial review of materials in certain types of cases where judicial determination is not needed; and judicial education, which enhances case management.

Magnuson told the subcommittee that the Judicial Conference has reduced its original request for 19 bankruptcy judgeships to 11. In addition, the Conference currently is holding nine bankruptcy judgeships vacant in districts where caseloads have declined.

Magnuson said, "Personal lives, livelihoods, states, even countries, depend on the economic health of its citizens and businesses. When economic health fails, the 'fresh start' provided by the bankruptcy code helps to minimize the devastating impact. Without an adequate number of bankruptcy judges to administer these cases, the goal of a fresh start is in some cases destroyed because of delay."

Court Employees Honored With 1996 Director's Awards

Two clerks of court and a systems manager are the recipients of the 1996 Director's Awards for Administrative Excellence, while three clerks of court and a deputy circuit executive received the 1996 Director's Awards for Outstanding Leadership. In addition, one clerk of court was awarded a Special Director's Award for his outstanding leadership in a crisis situation. Administrative Office Director Leonidas Ralph Mecham praised the recipients, saying, "Their efforts demonstrate the type of dedication, creativity, personal leadership, and commitment to quality which will help to move the federal Judiciary into the next century."

and information for his staff. Under his leadership, the court was able to resume business just one week after the bombing.



Leah Arms

Leah Arms, systems manager for the U.S. Bankruptcy Court for the Western District of Oklahoma, was honored for her development of an imaging program for scanning court documents into electronic form. Within this system, judges, attorneys, and clerks can review and comment on documents at any time on a computer screen, thus saving the time and labor of retrieving and copying the original paper files.

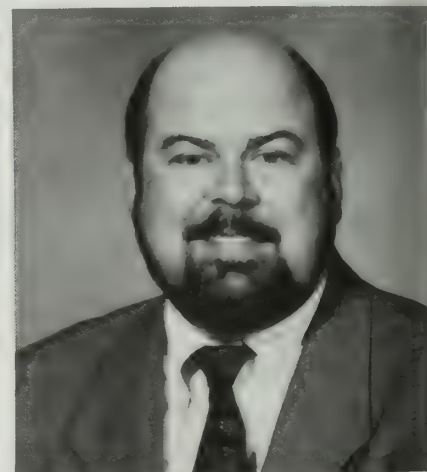
Jon D. Ceretto, clerk of court for the U.S. Bankruptcy Court for the Central District of California, was honored for his role in modernizing the court through automation, human resource management, more efficient use of space, and streamlined



Robert D. Dennis

1996 Director's Awards for Administrative Excellence

The recipients of the 1996 Director's Award for Administrative Excellence were honored for their accomplishments in improving the administration of the federal Judiciary. Nominees were judged on the originality of their accomplishment, its transferability to other federal courts, the amount of cost-savings produced, and the lasting impact of its contribution to the Judiciary.



George A. Ray

Special Director's Award

Robert D. Dennis, clerk of court for the U.S. District Court for the Western District of Oklahoma, was recognized for his extraordinary leadership in the aftermath of the April 19, 1995, bombing of the Alfred P. Murrah Federal Building in Oklahoma City. Dennis was inside the Murrah building at the time of the explosion and suffered minor injuries. He then returned to the damaged courthouse to help with evacuation and provide emotional support



Jon D. Ceretto

office procedures. He also replaced the traditional hierarchy of the clerk's office with a number of self-directed teams intended to increase the court's service orientation.

George A. Ray, clerk of court for the U.S. District Court for the Northern District of New York, was honored for his efforts to automate and modernize the court's jury system. He procured a jury program, which issues jurors bar-coded badges used to keep track electronically of jurors' attendance, ↗

MAY

29-31 Wednesday-Friday
National Workshop for Bankruptcy Judges II

JUNE

3-4 Monday-Tuesday
Committee on Criminal Law

5-6 Wednesday-Thursday
Committee on Judicial Resources

6-7 Thursday-Friday
Committee on Automation and Technology

9-11 Sunday-Tuesday
Committee on Security, Space and Facilities

9-12 Sunday-Wednesday
Committee on Court Administration and Case Management

10-11 Monday-Tuesday
Committee on Judicial Branch

12-14 Wednesday-Friday
D.C. Circuit Conference

12-14 Wednesday-Friday
Workshop for Magistrate Judges of the 1st, 3d, 4th, 7th, & 10th Circuits

13-14 Thursday-Friday
Committee on Administration of the Magistrate Judges System

13-14 Thursday-Friday
Committee on Administration of the Bankruptcy Judges System

13-15 Thursday-Saturday
Second Circuit Conference

19-22 Wednesday-Saturday
Committee on Rules of Practice and Procedure

20-21 Thursday-Friday
Committee on Federal-State Jurisdiction

27-29 Thursday-Saturday
Fourth Circuit Conference

BANKRUPTCY JUDGE, Northern District of Oklahoma

The U.S. Bankruptcy Court for the Tenth Circuit seeks applications from highly qualified candidates for a 14-year appointment as a bankruptcy judge for the Northern District of Oklahoma at Tulsa to succeed a retiring bankruptcy judge. The position will be available December 31, 1996. Current annual salary is \$122,912. For further information and an application form, contact Robert L. Hoecker, Circuit Executive, U.S. Court of Appeals for the Tenth Circuit, 1823 Stout Street, Denver, CO 80257, or call (303) 844-2067. Application deadline is **June 14, 1996**.

CLERK OF COURT, Northern District of Indiana

The U.S. District Court for the Northern District of Indiana has four judges, with a main office in South Bend and divisional offices in Fort Wayne, Gary/Hammond, and Lafayette. Applicants should have at least ten years of progressively responsible administrative experience which provided a thorough understanding of the organizational, procedural, and human resources aspects of managing an organization, at least three of which must have been in a position of substantial management responsibility. One or more degrees in public, business or judicial administration or law may be substituted for a portion of the required experience. Salary: JSP 16 to 17 (\$84,635 to \$112,669), depending on qualifications. Interested applicants should send a letter of application, and an original and four copies of a current resume, by **June 1, 1996**, to: Hon. Harry C. Dees, Jr., Attn: Clerk Applications, Robert A. Grant Federal Building and U.S. Courthouse, 204 S. Main Street, Room 315, South Bend, Indiana 46601.

CLERK OF COURT, Northern District of Iowa

Applications are being accepted for the position of Clerk of Court for the U.S. Bankruptcy Court for the Northern District of Iowa. The Clerk functions as the court's chief administrative officer and is responsible for all aspects of its operation, including case processing, policy implementation and monitoring, training, long-range planning, budgeting, space and facilities, financial accounting, public relations, property and procurement, and management of a staff of 17. The Clerk is also responsible for developing and maintaining a broad range of automation applications. The Clerk serves as the court's liaison to the public, the bar, and other governmental agencies. The official duty station is Cedar Rapids, Iowa, with a division of the court in Sioux City. Applicants must possess a minimum of ten years of progressively responsible management experience. Prior court experience is highly desirable. The position carries a target grade of 16 (\$84,635-\$110,023). Persons interested must submit four copies of a detailed resume and salary history to William L. Edmonds, Chief Judge, U.S. Bankruptcy Court, Federal Building, 320 Sixth Street, Sioux City, Iowa 51101. Applications must be received by the close of business on **May 31, 1996**, or until the position is filled.

CHIEF PROBATION OFFICER, Middle District of Florida

The Middle District of Florida has eleven district judges and ten magistrate judges. The Probation Office is headquartered in Tampa, with staffed divisional offices in Tampa, Jacksonville, Ocala, Orlando, Cocoa, Sarasota, Ft. Myers and Naples. The Chief Probation Officer manages a staff of over 145 and is responsible for the administration and management of probation, supervised release, and parole services in the district. Required qualifications are outlined in the Judicial Salary Plan. The target grade for this position is JSP 18. To apply, send a resume and cover letter by **June 10, 1996**, to the Honorable Elizabeth A. Kovachewich, Chief Judge, Attention: Human Resources (#96-16), Post Office Box 53558, Jacksonville, Florida 32201. The incumbent will be required to undergo a full FBI background investigation.

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Department of Justice, Office of the Inspector General

age, and other expenses. It was estimated that the system saved the court \$50,000 in the first year of its implementation.



Terence H. Dunn

1996 Director's Awards for Outstanding Leadership

The recipients of the 1996 Director's Awards for Outstanding Leadership were recognized for their long-term contributions to managerial effectiveness and improved administration in the federal judiciary. The award is given to Judiciary managers who have made outstanding sustained leadership efforts toward increasing program effectiveness and/or reducing administrative costs.

Terence H. Dunn, clerk of court



Jill Sayenga



Geri M. Smith

for the U.S. Bankruptcy Court for the District of Oregon, was honored for his contributions to the automation efforts in the bankruptcy court system and his efficient administration of the court. He was one of the first clerks to use automated case management applications, and he currently serves as chair of the Bankruptcy Case Management and Statistics Umbrella Group. He has also worked with the local bar association to draft new local rules and has assisted in the Ninth Circuit's rules review process.




Robert M. Wily

Jill Sayenga, deputy circuit executive for the U.S. Court of Appeals for the District of Columbia Circuit, was recognized for her efforts to automate the circuit's offices

and to effect cost savings in circuit operations. She led the conversion of office space into an Automation Training Center, which allows the court to train staffers in-house, thus saving time and money. In addition, she developed a new budget process and a new printing system for court opinions.

Geri M. Smith, clerk of court for the U.S. District Court for the Northern District of Ohio, was honored for her efforts toward efficiency in court administration. She led several pilot programs in case management, which are credited with reducing the number of cases pending by 50 percent. She has served as associate chair of the Support and Education Area Umbrella Group, and she is coordinator of the New Cleveland Courthouse Project.

Robert M. Wily, clerk of court for the U.S. Bankruptcy Court for the Eastern District of Virginia, was honored for his role in establishing the Judiciary's current advisory system. He played a key role in the creation of the Court Administration Advisory Council, which he envisioned as a mechanism to bring various court groups together to work for the common good. He served as chair of the Bankruptcy Clerks Advisory Group during a time of serious staffing cuts, and he helped to initiate a fair allocation of staffing throughout the Judiciary.

Nominations for Director's Awards may be made by anyone in the federal Judiciary and all current and former employees of the federal courts, except federal court judges, are eligible. Employees of the AO, the Federal Judicial Center, and several special courts are not eligible. All nominations are reviewed by a panel appointed by the Director, who makes the final selection based upon the panel's recommendations. 

JUDICIAL MILESTONES

Appointed: Robert L. Dube, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Florida, March 25.

Appointed: Jeffery P. Hopkins, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Ohio, April 1.

Appointed: Edward C. King, as U.S. Magistrate Judge, U.S. District Court for the District of Hawaii, March 15.

Appointed: Sidney R. Thomas, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, March 11.

Appointed: David T. Walker, as U.S. Magistrate Judge, U.S. District Court for the District of Alaska, April 15.

Elevated: Bankruptcy Judge Letitia Z. Clark, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Texas, succeeding Chief Bankruptcy Judge Manuel D. Leal, January 1.

Elevated: Bankruptcy Judge Margaret A. Mahoney, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Alabama, succeeding Chief Bankruptcy Judge Gordon B. Kahn, February 9.

Elevated: Bankruptcy Judge Allan Shiff, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of Connecticut, succeeding Chief Bankruptcy Judge Robert Krechevsky, March 1.

Elevated: Judge G. Ernest Tidwell, to Chief Judge, U.S. District Court for the Northern District of Georgia,

succeeding Chief Judge Robert L. Vining, Jr., April 1.

Senior Status: Judge Robert G. Doumar, U.S. District Court for the Eastern District of Virginia, April 30.

Senior Status: Judge James M. Kelly, U.S. District Court for the Eastern District of Pennsylvania, March 31.

Senior Status: Judge J. Clifford Wallace, U.S. Court of Appeals for the Ninth Circuit, April 8.

Retired: Magistrate Judge Peter Scuderi, U.S. District Court for the Eastern District of Pennsylvania, March 31.

Retired: Bankruptcy Judge C. Houston Abel, U.S. Bankruptcy Court for the Eastern District of Texas, March 31.

Retired: Senior Judge Prentice H. Marshall, U.S. District Court for the Northern District of Illinois, April 15.

Retired: Magistrate Judge Michael Mignella Jr., U.S. District Court for the District of Arizona, March 14.

Deceased: Senior Judge Charles M. Merrill, U.S. Court of Appeals for the Ninth Circuit, March 29.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

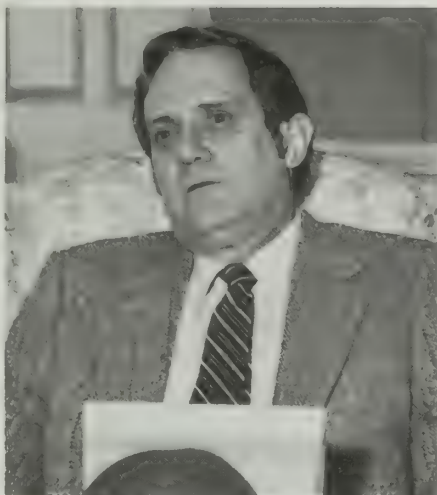
As of May 1, 1996

Courts of Appeals	
Vacancies	13
Nominees	9
District Courts	
Vacancies	46
Nominees	30
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	22

Devitt Award Honors Judge John C. Godbold

A former chief judge of two circuits and director of the Federal Judicial Center, Judge John C. Godbold (9th Cir.), has been selected to receive the Fourteenth Annual Edward Devitt Distinguished Service to the Judiciary Award.

Godbold's career, the selection committee noted, "exemplifies the wisdom and continuing necessity for the constitutional design that established the Judiciary as an independent branch of government." His long service to the Judiciary "demonstrates that judicial independence preserves the originality, creativity, commitment, and diligence that all federal judges seek as they serve the cause of justice and freedom." Godbold was chief judge of the Ninth Circuit when it was split into



Judge John C. Godbold

the Fifth and Eleventh Circuits; he went on to serve as chief judge of the Eleventh Circuit. "Soft-spoken and low-key as he is," one of his nominators wrote, "John Godbold has a re-

markable ability to lead groups of his peers in making difficult and often courageous decisions." As director of the Federal Judicial Center, Godbold further served the Judiciary, and he continues to make a significant contribution to the court of appeals in his senior status.

The annual Devitt Award, named after the late Judge Edward J. Devitt (D. Minn.) and given by the American Judicature Society, recognizes extraordinary service by members of the federal Judiciary. All Article III judges are eligible for the award. The award's selection committee consists of Justice Anthony M. Kennedy (Sup. Ct.), Chief Judge Proctor Hug (9th Cir.), and Chief Judge Sarah Evans Barker (S. D. Ind.).

Chief Justice continued from page 1
the courts, it was helpful to take a look at the system's evolution over the past two centuries. One result of the process, the Chief Justice said, has been that while the overwhelming majority of cases are filed in the courts, there has been a "remarkable increase in the business of the federal courts."

"Congress, understandably concerned with the increasing traffic in drugs and the violence resulting from the use of guns, has legislated in and again to make what once were only state crimes federal offenses," Rehnquist said. "Congress has been of the opinion that even though these gun and drug crimes should be prosecuted under state law, the state penal systems were lenient in paroling serious offenders after having served only a fraction of the time to which they were sentenced. So Congress has stepped in, prescribed very severe




Chief Justice Rehnquist discusses judicial independence.

sentencing guidelines for federal crimes, and federalized countless crimes involving drugs and guns." As a result, Rehnquist said, when looking at the future of the federal courts, it is understood that Congress likely will continue to add to

their criminal and civil jurisdictions.

"All the planning and discussion by judges as to the future of the federal Judiciary has a somewhat tentative, conditional air about it: in this area we are not masters in our own houses and any major change will have to be approved by Congress," Rehnquist said. The Judiciary in turn must change with the times while also maintaining its independence. The Chief Justice acknowledged that this does not mean that federal judges should be free from criticism for their decisions or that the "country will be forever in sway to groups of non-elected judges."

Rehnquist concluded, "Change is the law of life, and the Judiciary will have to change to meet the challenges which will face it in the future. But the independence of the federal Judiciary is essential to its proper functioning and must be retained." 

Judge Barefoot Sanders and Committee Address Judicial Concerns

Judge Barefoot Sanders was appointed to the United States District Court for the Northern District of Texas in 1979. Between 1989 and 1995, he was chief judge of the court. The Chief Justice appointed Sanders to the Judicial Conference Committee on the Judicial Branch in 1989 and named him the chair of that committee in 1994.

Q: The Committee on the Judicial Branch plays a central role in the day-to-day lives of federal judges. How does the committee set priorities and take positions on issues of interest to judges?

A: The Chief Justice has charged the committee with addressing problems affecting the Judiciary as an institution and affecting the status of federal judges. Acting in that capacity, the committee studies and makes recommendations to the Judicial Conference on judges' compensation and benefits, as well as other issues affecting the status of the federal judicial office. The committee is also responsible for reviewing and advising the Judicial Conference on appropriate changes to the travel regulations for judges.

The committee is comprised essentially of one Article III judge from each circuit, as well as a bankruptcy judge and a magistrate judge selected nationally. Our members are Judges David Hansen (8th Cir.), Paul Kelly (10th Cir.), Fred Parker (2d Cir.), Randall Rader (Fed. Cir.), Bruce Selya (1st Cir.), Eugene Siler (6th Cir.), B. Avant Edenfield (N.D. Ga.), Joyce Hens Green (D. D.C.), Harry Leinenweber (N.D. Ill.), James Redden (D. Or.), Joseph Rodriguez (D. N.J.), Dennis Shedd (D. S.C.),

Claudia Wilken (N.D. Cal.), Bankruptcy Judge Glen Clark (D. Utah), and Magistrate Judge Donald Abram (D. Colo.). In this way, our members represent the interests of judges from across the country. I strongly encourage judges who wish to address their concerns to the committee to contact their circuit representative.

Generally the committee meets in person twice a year to study current issues under its jurisdiction and to prepare recommendations to the upcoming Judicial Conference. Between meetings, the work of the committee is carried on by four standing subcommittees. In this process, we consult closely with the Administrative Office, other Judicial Conference committees, and the Federal Judges Association.

Issues which come before the committee may be originated by the members, other judges, another conference committee, or the Administrative Office. Because we are the "judges' committee," the committee will respond to each matter presented by a judge.

Q: You recently testified before House and Senate subcommittees in support of legislation, which would delink judicial, congressional, and Executive Schedule pay. Why is this legislation important?

A: I believe that Congress, in enacting the Ethics Reform Act of 1989, intended that the statute's Employment Cost Index (ECI) mechanism would provide judges, members of Congress, and other top government officials with regular pay adjustments to match

the economic indicators, which would alleviate the need for major "catch-up" increases later on. The intent of the Ethics Reform Act has not been realized. The question of whether judges receive cost-of-living increases each year remains a political decision to be made by Congress.

Judges have not received any cost-of-living adjustment since 1993, and unless pay adjustments are provided in the near future, the crisis caused by diminution of compensation which we experienced in the 1980s will recur.

There are sound reasons for delinking compensation of judges from that of other top government officials. Their career expectations are entirely different. Judges, unlike members of Congress and Executive Schedule political appointees, make a lifetime commitment to public service. Judges should be able to plan their financial futures based on the reasonable expectation that their compensation will stay even with annual increases in the cost of living.

Judges, unlike other professionals during the past two decades, have suffered a 21 percent reduction in real pay, as adjusted for inflation, despite the salary increases that accompanied the Ethics Reform Act of 1989. The purchasing power of judges has similarly suffered.

I agree with Representative Bob Livingston (R-LA), who recently observed that the repeated denial of cost-of-living adjustments to top government officials may imperil the pluralism and integrity of all three branches of government. I am afraid that the decline in the worth of the judicial salary may adversely affect the ability of the Judiciary to attract and retain on the bench

most qualified men and women. This is especially likely to be the case in urban areas with high costs of living. These are precisely the areas where other federal employees have enjoyed substantial locality-based pay increases under the Federal Employees' Pay Comparability Act of 1990. We have legislation pending in the Senate and House, which would repeal section 140 of Public Law 97-170 and sever the linkage between judges' salaries and those of members of Congress and Executive Branch officers. This legislation, if enacted, would provide that judges' salaries would be adjusted automatically on an annual basis, assuming economic conditions so justified.

Q: As chair of the Judicial Branch Committee, you communicate with Congress on issues of interest and concern to federal judges. Do you encourage other judges to do the same?

A: I certainly do. I believe that it is mutually beneficial to the two branches if judges and members of Congress periodically exchange views. It is my sense that members of Congress want to engage in a constructive dialogue with judges on questions which relate to judicial administration, as well as other issues. The committee has designed a program to promote communications between the judicial and legislative branches through visits to the courts by members of Congress. Last year, I wrote to chief justices to encourage them to invite senators and representatives to visit their courthouses. The purpose of these congressional visits is to foster mutual understanding and establish lines of communication between the two branches. While the committee is mindful of the need for separation of powers, we believe that an open line of communication between the

branches can facilitate the public good. I don't believe separation was ever intended to mean alienation.

Q: The question of judicial independence has been the subject of much discussion recently. What are some of your reflections on this issue?



Judge Barefoot Sanders


A: It seems to me that the Chief Justice and other judges have spoken eloquently and forcefully about the need to preserve the independence of judges and, in particular, judges' decisional autonomy. I do not believe that I can add much more to the discussion except to suggest that judicial independence is important not only to the judicial system. The independence of the Judiciary must be credible to those being judged. The constitutional guarantees of life tenure and irreducible salary instill confidence in the public that the exercise of judicial power is being applied properly and objectively.

Over the years, the committee has explored methods for bringing about a better understanding of the vital importance of an unencumbered Judiciary to the Congress, the

executive branch, the media, the bar, and the general public. We will continue our efforts to increase awareness about the importance of judicial independence.

Q: What are some other issues that the committee is focusing on today or will be addressing in the near future?

A: The preeminent concern of the committee is judicial compensation. Nevertheless, we have not lost sight of other issues of potential benefit to judges. The committee is seeking an extended retirement "Rule of 80" that would allow judges to take senior status as early as age 60 with 20 years of judicial service. Under present law, life-tenured judges may not take senior status until they reach age 65 with a minimum of 15 years in service. An inequity exists for those who become federal judges before age 50. It seems unfair that a judge who has served on the bench for many years but finds that he or she must leave the Judiciary prior to attaining age 65 would have no vested interest in any retirement income and would receive nothing in the way of benefits from those years that he or she served. Judges are alone among federal employees in this respect.

We are also reviewing ways in which the judicial salary might be supplemented by providing related benefits. I have asked two of our subcommittees to look at ways of achieving this objective. The committee is also considering ways of assisting judges in making more informed decisions about their benefits, including those dealing with health and life insurance. We are working closely with the AO on these issues. 

Rules Committees Urge Review of Voir Dire Methods

The Judicial Conference's Advisory Committees on Civil and Criminal Rules have voted not to proceed with the preliminary draft of proposed amendments to Civil Rule 47 and Criminal Rule 24 that would have entitled attorneys to participate in voir dire and orally examine prospective jurors under reasonable court-imposed limits.

Judge D. Lowell Jensen (N.D. Cal.), chair of the Criminal Rules Committee, and Judge Patrick E. Higginbotham (5th Cir.), chair of the Civil Rules Committee, said that the amendments addressed a significant concern voiced by some members of the bar that judges may be doing an inadequate or perfunctory job of questioning prospective jurors. A 1994 Federal Judicial Center survey of U.S. district judges found that about 55 percent provide lawyers with an opportunity to question prospective jurors, and some judges allow lawyers to do all the questioning. Nonetheless, the judges' major

objection to the proposals was the concern that—despite provisions of the proposed rule granting authority to impose reasonable limits—the loss of full judicial control could lead to abuse. Other judges were concerned that the proposal could lead to more appeals.

Attorney-conducted voir dire remains an important concern for the bar. Twenty-five national and local bar and other legal associations commented in favor of the proposed amendments. Some argued that a trial lawyer has more knowledge of the case and is in a better position to ask pertinent questions of veniremembers than is a trial judge. Some lawyers also believed—with support by some juror studies—that prospective jurors are more comfortable responding to questioning by the attorneys than to questioning by a judge whose stature and office may affect their answers.

The committees were not persuaded that pursuing the proposed

changes in the rules was the appropriate response to the range of expressed concerns. The committees believed, however, that it was important to raise the level of the federal Judiciary's consciousness on adequate voir dire and recognize the appropriate role of lawyers in selecting a fair jury. As a first step, the committees urged the development of educational programs for judges on the jury selection process and exploration of voir dire methods, including informed discussions with experienced trial lawyers and judges.

Jensen and Higginbotham agreed that the public airing of the issue was useful—that the rulemaking process had operated as it was designed. Both advisory committees believe that training sponsored by the FJC offers a good first measure in bridging the gap between the bench and bar on voir dire and in achieving methods of jury selection that—while drawing upon local practice—are both fair and efficient.

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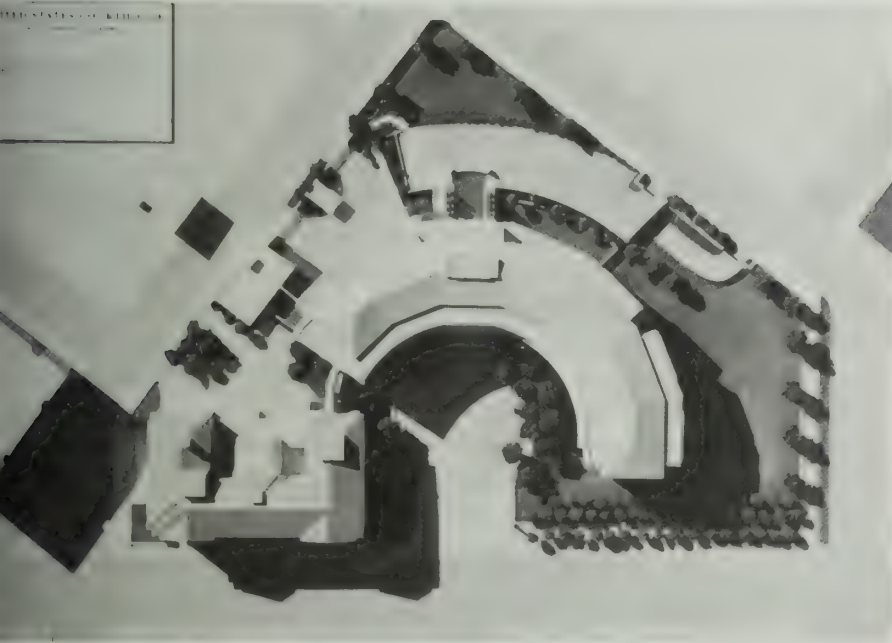
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June 1996

Courthouses Highlight Architectural Innovations



Model of the Montgomery, Alabama, site shows how the new addition (right) complements older courthouse (foreground) while remaining sensitive to an historic site.

A courthouse and its architecture play a central role in a community, both as a structure open to the public and as a representative of the nation's justice system. The demands and challenges prevalent in courthouse construction today are evident in both the exterior—security and durability—and the interior—evolving technologies and

modern efficiencies. Thrown into the mix of tight budgets and an ever-increasing workload is the large number of federal courthouses that were built in the 1930s and are experiencing serious physical deterioration. The result is a unique series of challenges that have sparked the creativity of the Judiciary, the Gen-

See *Courthouses* on page 2

Bill to Prioritize Buildings Passes

The Senate has passed legislation that would require the General Services Administration (GSA) to prioritize public building projects in 3-year periods and develop design guidelines and standards for federal courts, essentially preempting the existing *U.S. Courts Design Guide*. The legislation now goes to the House, which plans action on a similar bill in late June.

The Public Building Reform Act of 1996, S. 1005, was cosponsored by Senator John H. Chafee (R-RI), chair of the Committee on Environment and Public Works, and Senators John W. Warner (R-VA) and Max S. Baucus (D-MT), chair and ranking member, respectively, of the committee's Subcommittee on Transportation and Infrastructure. The bill would "improve the process of constructing, altering, and acquiring public buildings" and would apply to all public buildings, not only courthouses. While the Judicial Conference has not taken a position on the bill, the Executive Committee is expected to consider it this month.

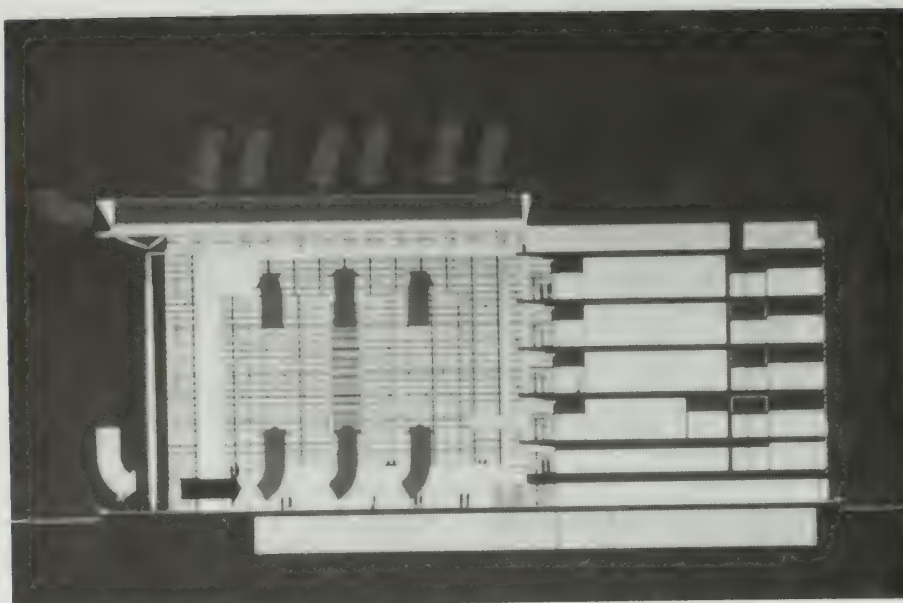
Courthouse Priorities

Provisions of the bill would require the GSA to submit to

See *Legislation* on page 4

INSIDE

New Law Changes Prisoner Litigation	3
Reforms to Judicial Selection Process Urged	7
Federal Bureau of Prisons Director Interviewed	10



Arrows indicate how air flows through the atrium in the new Phoenix, Arizona, courthouse, and how direct sunlight is deflected at the roof.

Courthouses continued from page 1
eral Services Administration (GSA), and architects as demonstrated by several new federal courthouse projects that are innovative, flexible, and efficient.

Adaptive Reuse Scranton, Pennsylvania

One success story is the Scranton, Pennsylvania, courthouse, which its architects say represents the marriage of two buildings in the finest sense—the merging of the best assets of each without sacrificing quality.

The project began as an older courthouse with a planned annex and major circulation problems. It became a single integrated project when the decision was made to design the two buildings to work as one. The architect, Frank Grauman of Bohlin, Cywinski and Jackson, credits Judge Douglas P. Woodlock (D. Mass.), the 1996 recipient of the Thomas Jefferson Award for Public Architecture, and his series of seminars on the process and substance of designing courthouses with inspiring the court's judges to see architecture as an opportunity.

Faced with pressing space needs and an annex that would not easily

accommodate all the new courtrooms, the judges looked at the solutions the buildings could offer jointly. The result is a design that welcomes the public at the junction of the old and new buildings through an eye-catching entry. The judges agreed to a collegial floor and eight courtrooms—one fewer than first stipulated—and gained an array of differently sized courtrooms, some historic, others with state-of-the-art

technology, further redesigned to comfortably accommodate jury deliberation rooms. This type of design works well with the concept of courtroom sharing.

An Historical Context Montgomery, Alabama

In Montgomery, Alabama, the courthouse addition is to be located in a two-block area adjoining the existing courthouse. The planned addition's size and design is sensitive not only to Montgomery's gridplan dating from the early nineteenth century and the architecture of nearby historic buildings, but also to the Greyhound bus station, which was historically significant in the 1961 Freedom Rides. The resulting curvilinear building was designed by Lee Sims of Barganier, Davis, Sims Architects Associates, to arc gently away from the old courthouse, complementing its architecture. The design provides windows for natural light, chambers for district judges on a collegial floor with access to the old courthouse and their new courtrooms below, six courtrooms that preserve the scale and proportions of the old courtrooms, separate



The artist's drawing shows how the Scranton, Pennsylvania, courthouse addition with its central entry also will function as a public space.

New Law Brings Broad Reforms to Prisoner Litigation

On April 26, 1996, the President signed omnibus budget reconciliation legislation, Public Law 104-134, which included the Prison Litigation Reform Act of 1996. This law substantially changes almost every aspect of federal court procedures currently used in non-habeas prisoner litigation, including procedures for filing and reviewing in forma pauperis (IFP) petitions, court ordered remedial relief for prison conditions, and appointment and payment of federal special masters. Two of the most immediate administrative concerns that face the courts from this legislation are the new requirements imposed for special masters and IFP petitions.

Special Masters

The act, in an earlier version, would have required that only magistrate judges be appointed as special masters in prison condition cases. This requirement was opposed by the Judicial Conference, and the law only requires the court to choose a special master from candidates provided by the parties.

The law limits the amount special masters may be compensated and requires that masters be paid out of the Judiciary's own funds, rather than be charged to the parties. Special master compensation is limited to the rate established for court-appointed counsel under the Criminal Justice Act. Prior to enactment of

the law, special masters were paid by the states, and several states now argue that the law is retroactive, which would relieve them of their obligation to pay for special masters in on-going cases.

The act also states that special masters should receive hourly rate compensation "plus costs reasonably incurred by the special master." These costs are also to be paid from funds appropriated to the Judiciary. No details were provided regarding what may be the various types or amounts of these costs or how to determine their reasonableness. The court must decide these issues on a case-by-case basis. Depending on

See Reform on page 6

prisoner and judges' elevators, and restricted circulation for security. The ground floor houses mechanical facilities, food services, and the bankruptcy courts.

New Take On An Old Principle Phoenix, Arizona


Innovative engineering technology went into the new courthouse in Phoenix, Arizona, where climate is a major consideration. Daytime temperatures in the summer easily can reach triple digits. At such times, people tend to go to or from buildings without stopping to experience public space. But the architects wanted to make their courthouse a positive experience. The L-shaped, multi-story building was planned with a very large atrium to which all the floors look. The glass-walled atrium provides natural lighting to the floors, and this is where many public functions, such as jury assembly, are held and where the ceremonial courtroom is located. Unusual in such a hot cli-

mate, the atrium is not air-conditioned. Instead, the architects, Richard Meier and Partners, made use of the old principle of passive cooling.

While roof sunscreens deflect entry of direct sunlight into the atrium, warm outside air is drawn in at the bottom of the atrium wall. Here, the air is misted, cooling in the process, because energy is expended when the mist changes to a gaseous state. The cooled air enters the atrium, rising as it warms, until it is trapped and vented at the roof. The cycle repeats itself continuously. Project architects, with the assistance of the Department of Energy, used a computer-generated model of the atrium to check the air flow and heat exchange. Temperatures on the atrium floor can be a comparatively mild 74°F, and will never exceed 90°F—all without air-conditioning.

Automated Efficiency San Francisco, California

While the Phoenix courthouse may win notice for its creative use of

an old principle, the Phillip Burton Federal Building and U.S. Courthouse in San Francisco, California, is using the latest technology to become the most energy efficient federal building in the nation. The building, the largest federal facility in the West, is a demonstration project with the GSA, Pacific Gas and Electric Company, and experts from the private and public sectors. The project is expected to reduce energy costs in the building by more than 25 percent. Stage I of a 3-stage project demonstrates the latest in lighting controls strategies. By Stage III, slated for completion by 1997, most of the building's functions—including the lighting, heating, ventilation, and air conditioning systems—will be automated by the energy management system, which will coordinate the systems for energy efficiency and cost-effectiveness. 

Legislation continued from page 1

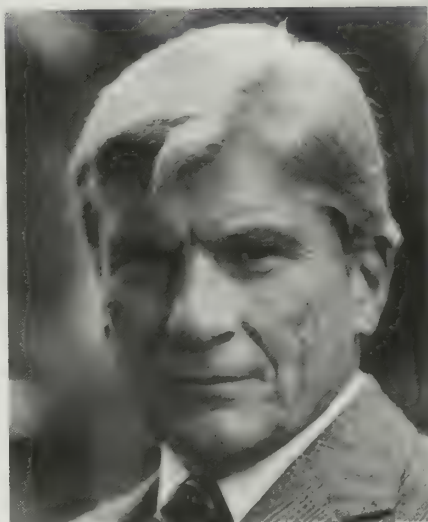
Congress, as part of its annual authorization requests, a public buildings plan for the first three fiscal years with a list, in order of priority, of each federal construction or acquisition project. In the case of proposed courthouse construction, the plan must also include:

- the number of federal judges for whom the project is to be carried out and courtrooms available for judges;
- the projected number of federal judges and courtrooms to be accommodated by the project at the end of the 10-year period beginning on the date;
- a justification for the projection, including a specification of the number of authorized positions and the number of senior judges to be accommodated;
- the year in which the courthouse in use as of the date of submission of the prospectus reached maximum capacity by housing only courts and court-related agencies; and
- the level of security risk at the courthouse, as determined by the director of the Administrative Office.

Design Guide and Standards

The GSA also would be required to develop, in consultation with the AO, a report specifying the "characteristics of court accommodations that are essential to the provision of due process of law and the safe, fair, and efficient administration of justice by the federal court system." The report, to be submitted to the Senate's Committee on Environment and Public Works and the House's Committee on Transportation and Infrastructure, would be used in the design of court accommodations.

The Judiciary currently uses the *U.S. Courts Design Guide* as a guide for the cost-effective construction of U.S. courthouses. First approved by the Judicial Conference and published in its present form in 1991, the *Design Guide* was developed among



Senator John W. Warner

the Judiciary, the GSA, and a team of experts in space planning, security, acoustics, mechanical-electrical systems, and automation. It has been periodically reviewed and amended by the Judicial Conference to reflect cost-cutting initiatives and changing requirements. This *Design Guide* would be replaced by a GSA-generated guide, under this legislation.

In addition, the bill calls for the Commission on Fine Arts to provide advice on federal courthouse designs, including an evaluation of the ability of the design to "express the dignity, enterprise, vigor, and stability of the American Government appropriately and within the



Senator Max S. Baucus

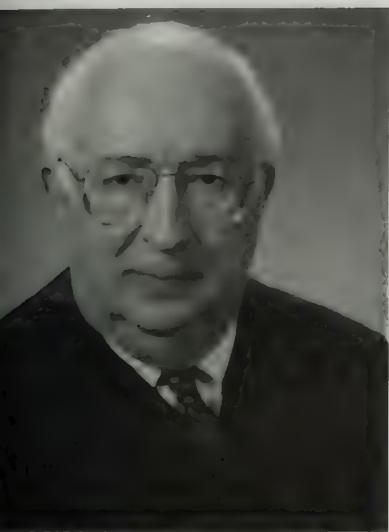
accepted standards of courthouse design."

Judiciary's Steps

Representatives of the Judicial Conference recently testified before Congress on the steps the Judiciary has taken to implement cost-effective design strategies and prioritize courthouse construction projects in an effort to do its part to make the federal courthouse construction program accountable, economical, and responsive to the needs of litigants.


"We believe that in the past few years, the Judiciary has developed a reasonable, well thought out program to determine where our most critical needs are and to establish space standards," said Judge Robert E. Cowen (3d Cir.), chair of the Judicial Conference's Committee on Security, Space and Facilities. Cowen testified before the Senate Environment and Public Works Subcommittee on Transportation and Infrastructure. The previous week, Judge Norman H. Stahl (1st Cir.), a member of the Security, Space and Facilities Committee, appeared before the House Transportation and Infrastructure Subcommittee on Public Buildings and Economic Development. Both subcommittees were considering the courthouse construction portion of the GSA's fiscal year 1997 federal building program.

Cowen and Stahl provided the subcommittees with specific details of cost-effective design strategies that are being implemented in courthouses across the country. In addition, a rigorous review of the *Design Guide* by the Judiciary, with comments from the GSA and the private sector, is in progress as part of the effort to determine where appropriate savings may be realized. Recommended changes to the *Design Guide* are expected to be presented to the Judicial Conference within the next year. Among the areas under



Norman H. Stahl

ew are the size and number of libraries, conference rooms and training rooms necessary in a courthouse, the size and dimensions of courtrooms. It also is expected that updated *Design Guide* will contain information on the integration of the latest technology in order to optimize courthouse space and highlight innovations used in recently designed courthouses.

Cowen also shared with the subcommittee a copy of a 5-year plan for courthouse construction in order of priority, as approved by the Judicial Conference earlier this year. 



Robert E. Cowen

Appellate Survey Results Released

Senator Charles Grassley (R-IA), chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, last month released a report on his survey of U.S. court of appeals judges. Earlier this year, Grassley sent a survey to all federal court of appeals and district court judges, seeking their views on a variety of issues facing the court system. Of the 249 federal appellate judges surveyed, he received responses from 170 (68.3 percent) judges.

"I am pleased with the results of the survey, and I hope to continue the candid and constructive dialogue that the survey has initiated between Congress and the federal judges," Grassley said in a statement released by his office. "From the responses received, there is no question that we can save money in the Judiciary, limit the waste of resources and ensure the effective administration of justice."

In its executive summary, the report identified the following themes:

- Further cost savings can be achieved by exploring such issues as sharing arrangements and integration of courtroom, library, and conference room space among federal and state judges; increased use of telecommunications and teleconferencing; and expanded use of alternative dispute resolution techniques.

- Because of the numerous criticisms of the General Services Administration (GSA), Congress should look into the GSA's work involving federal courthouses.

- Even though there has been an overall increase in caseload, the majority of judges felt their workload was manageable with the current number of judges.

- A review should be conducted to determine if restructur-

ing or reconfiguration of the circuits and districts is necessary.

- Because of differences in publication criteria in courts, Congress and the Judiciary should explore whether there should be national standards or criteria for publication and distribution of opinions.

- Judges are concerned with the expansion of Article III jurisdiction and its potential impact on the efficient functioning of the federal Judiciary and the overall quality of decision-making.

- Congress and the Administration should review the potential impact on the Judiciary's resources before and when they take action.

Leonidas Ralph Mecham, director of the Administrative Office, said that the survey represents a constructive contribution to the Judiciary's on-going effort to economize while continuing to provide necessary services to litigants and the public. Mecham noted that many of the items contained in Grassley's report already have been identified by the Judicial Conference's Economy Subcommittee and either are under active study or already have been implemented.

"Creativity, resourcefulness, and ingenuity are both necessities and realities in the management and operation of today's federal court system," Mecham said. "While the responses of individual judges to the Senator's survey speak for themselves, it certainly is no surprise that those who work in the courts are a fruitful and continuous source for productive and innovative ideas."

Grassley said that he hopes soon to release the findings of his survey of U.S. district court judges.

Bankruptcy Filings Continue to Climb to Record Levels

In the 12-month period ended March 31, 1996, bankruptcy filings increased 16.8 percent compared to the same period in 1995, according to statistics released by the Administrative Office. Filings for the previous 12-month period ended December 31, 1995, also showed a sizable 11.3 percent increase. If this trend continues, in 1996 bankruptcy filings will break—for the first time ever—the 1 million mark. The next highest level of filings during a 12-month period occurred in 1992, when in the 12-month period ending September 30, bankruptcy filings numbered 977,478. Preliminary data for the month of April 1996 shows over

100,000 cases filed—an all time high for monthly bankruptcy filings.

A total of 980,126 bankruptcy cases were filed in federal courts during the 12-month period ended March 31, 1996. Among the U.S. district courts, the Central District of California led with 85,819 filings. The largest percentage increase was in the Eastern District of Arkansas, with a 51.4 percent increase. Among the circuits, the Ninth Circuit, which includes the state of California, had the highest number of filings at 227,211, and the Eighth Circuit showed the largest overall percentage increase in filings at 23.4 percent. All districts, with the exception

of the District Court of the Virgin Islands, showed increases in bankruptcy filings, when compared to the same 12-month period in 1995.

Of the total number of bankruptcy filings for the 12-month period ended March 31, 1996, there were 665,310 Chapter 7 filings, an increase of 17 percent over the 568,565 filings in the same period in 1995. The next large were Chapter 13 filings at 300,901, a rise of 18 percent over the same 199 period's 255,382 filings. There were 12,901 Chapter 11 filings in this 199 period for a drop of 8 percent from 14,055 in 1995. Chapter 12 filings rose slightly in this period, from 916 in 1995 to 988 in 1996.

March 31 was the end of the second quarter of FY 1996, during which 266,149 bankruptcy cases were filed in federal courts; 244,494 cases were filed in the first quarter of FY 96. Total business filings in the second quarter numbered 13,388, and non-business filings were 252,761.

Reform continued from page 3


how these provisions are interpreted and applied, the new law could have an enormous impact on the Judiciary's budget.

Prisoner In Forma Pauperis Petitions

The new law would limit a prisoner's ability to file IFP petitions that are frivolous, malicious, or untrue. Now, prisoners seeking to file actions IFP must submit certified copies of their prison trust fund account statements for the 6-month period immediately before filing the petition, as well as affidavits listing all assets. If funds are available, the prisoner must pay the full amount. When a prisoner does not have sufficient funds, the court must collect an initial partial filing fee of 20 percent of the average monthly deposit in the prisoner's account or the average monthly balance in the prisoner's account for the previous 6-month period, whichever is greater. Thereafter, prisoners are required to pay 20 percent of their monthly in-

come, whenever it exceeds \$10, to the court until the filing fee is paid. Responsibility for collecting these funds and submitting them to the court is with the agency that has custody of the prisoner. The law specifically states that the collected amount shall not exceed the statutory fee.

The law also seeks to limit non-meritorious IFP claims by prohibiting prisoners from filing any more than three IFP petitions if the first three were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief could be granted. A prisoner can file additional claims if he or she is "under imminent threat of serious bodily injury."

Several Judicial Conference committees may be considering the budgetary and administrative ramifications of the new law in the coming months, and the Administrative Office will continue to study the issues and questions it raises in order to provide information and, if appropriate, guidance, to the Judiciary. 

Bankruptcy Filings (12-month Period Ending)

Period	Filings
March 1996	980,126
December 1995	926,601
September 1995	883,457
June 1995	858,104
March 1995	838,959
December 1994	832,829
September 1994	837,797
June 1994	845,257
March 1994	858,482
December 1993	875,202
September 1993	897,231
June 1993	918,734
March 1993	939,935
December 1992	971,517
September 1992	977,478
June 1992	972,490
March 1992	966,491

JUNE

- 19-21 Wednesday-Friday**
Committee on Rules of Practice and Procedure
- 20-21 Thursday-Friday**
Committee on Federal-State Jurisdiction
- 27-29 Thursday-Saturday**
Fourth Circuit Conference

JULY

- 2-3 Tuesday-Wednesday**
Committee on the Administrative Office
- 7-10 Sunday-Wednesday**
Sixth Circuit Conference
- 15-17 Monday-Wednesday**
Committee on Codes of Conduct
- 16-19 Tuesday-Friday**
Tenth Circuit Conference
- 17-19 Wednesday-Friday**
National Workshop for Bankruptcy Judges III
- 19-20 Friday-Saturday**
Committee on the Budget
- 22-23 Monday-Tuesday**
Committee on Financial Disclosure

CLERK OF COURT, Court of International Trade

Applications are being accepted for the position of Clerk of Court for the United States Court of International Trade. The Clerk of Court functions as the court's administrative officer and is responsible for all nonjudicial operations of the court. Salary: JSP-16/1, \$87,821 to JSP-17/10, \$116,910. A bachelor's degree, and ten years of successful and progressively responsible experience in managing a public or business organization are required. A law degree, admission to practice, and several years of litigation are desirable. For further information and application procedures, call the personnel specialist at (212) 264-1799. Applications will be received until **August 30, 1996**. The position will remain open until filled.

CHIEF OF COURT SERVICES, Eastern District of Michigan

The Chief of Court Services is responsible for supervising court services staff; administering the court's facilities management plan; administering the court's procurement and contract services; reporting and accounting for all money processed through the Clerk's Office; court reporting and interpreting services; acting as security liaison with the U.S. Marshals Service and the Federal Protective Service; and acting as liaison with executive branch agencies. Must have a bachelor's degree and 10 years in a position of progressively responsible administrative experience, including at least five years in a position with substantial management responsibility. Master's degree in public, business, or judicial administration, and management experience in a federal or state court are preferred. Salary: JSP-14-16 (\$63,192-\$113,330). Submit cover letter and resume to Personnel Office, United States District Court, 814 Theodore Levin United States Courthouse, Detroit, Michigan 48226 by **August 2, 1996**.

MANAGER OF ADMINISTRATIVE SUPPORT CENTER, District of Colorado

The incumbent manages the administrative support center, which provides a variety of administrative services essential to the operation of the court, including automation, finance and budget, purchasing and procurement, space and facilities, and human resources. Must have at least three years of progressively responsible administrative, technical, professional, supervisory or managerial experience in at least one but preferably two or more of the functional areas of administrative support (automation, finance and budget, purchasing and procurement, space and facilities, and human resources. Annual salary range: CL 31: \$58,942 - \$95,821 (depending upon qualifications). Closing date: **August 2, 1996**. Application forms available from and should be returned to Carol Henderson, United States District Court, Room 207, Byron White United States Courthouse, 1823 Stout Street, Denver, CO 80257, telephone (303) 844-4627.

CHIEF DEPUTY CLERK, Western District of Michigan

Applications are being sought for a Chief Deputy Clerk to be located in the Grand Rapids Clerk's Office. Applicants must have a minimum of five years of progressively responsible administrative experience, including at least three years in a position of substantial management responsibility, which provided a proven comprehensive understanding of modern management techniques and automated systems. A bachelor's degree is required. A graduate degree in public administration, business, judicial administration or law is preferred. Salary range JSP 14-15 (\$59,920 -77,893-\$91,629). Please submit a resume, SF-171 form, letter of interest, and references to U.S. District Court, 452 Federal Building, Grand Rapids, MI 49503. Attn: Melanie S. Vugteveen. Phone: (616) 456-2389. Closing date for applications is **August 1, 1996**.

EQUAL OPPORTUNITY EMPLOYERS

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Commission Recommends Reforms for Appointment of Judges

The current process for selecting and appointing federal judges requires urgent attention and reform, concluded a blue ribbon bipartisan commission.

The size of the federal Judiciary, the number and duration of judicial vacancies, and the increasingly complex and prolonged process for judicial selection and appointment have exerted a profound impact on the filling of judicial vacancies, said the commission, which was organized and sponsored by the Miller Center of Public Affairs at the University of Virginia.

The commission conducted interviews with the various participants in the process of judicial selection, including representatives from the White House, Department of Justice (DOJ), Federal Bureau of Investigation (FBI), American Bar Association (ABA), and the Senate Judiciary Committee. The commission also invited and received comments from federal judges.

"It is our view that the important process of appointing federal judges need not be as difficult as it now seems," the commission said in its report. "The ultimate question is simply whether or not potential candidates have the qualities of integrity, good judgment and experience to become judicial officers of the United States. Occasional mistakes will be made. But no amount of bureaucratic vetting or testing for ideology will achieve perfection, and too complex a process can do more harm than good."

The commission adopted a series of recommendations dealing with the selection of nominees, the Senate confirmation process, redundancies in paperwork, and advance processing of nominees. The following are the recommendations.

■ Senators should identify candidates before the vacancy to be filled

occurs, and those candidates should be vetted promptly, either before the vacancy occurs or within 30 days thereafter. In no event should a senator's recommendation of candidates go to the Administration later than 90 days after the creation of a judicial vacancy.

■ Senators should recommend two or more names, in order of priority, for each vacancy in order to avoid delays in the event that a potential nominee becomes unavailable or undesirable. If a senator does not respond to the request for more than one name, then the Administration should advise the senator of additional persons whom the Administration would like to consider.

■ Officials in the executive branch concerned with the selection of judicial nominees should develop and maintain lists of prospective judicial nominees for district and appeals courts. If senators have not made their recommendations within 90 days of the creation of a district court vacancy, the president should proceed with the Administration's own nominee and, if confirmation is delayed, make a recess appointment.

■ The White House, DOJ, FBI, and ABA should complete their investigations of potential judicial candidates within 90 days of candidates being proposed by the senators.

■ The ABA Standing Committee on the Federal Judiciary should provide the Administration and the Senate Judiciary Committee with a brief statement of the reasons for its rating. The ABA also should expand the size of its committee and have more than one representative from each circuit.

■ The White House and the DOJ should consider reducing the breadth and extent of questions posed to judicial candidates, to duplicative inquiries, and to whether personal interviews are really needed.

■ The Senate Judiciary Committee should increase the number of its staff attorneys charged with investigating judicial nominees. When there are an unusually large number of nominations pending, the DOJ should continue its present practice of lending personnel to the Senate Judiciary Committee for the purpose of expediting its investigations.

■ If a judicial nominee is noncontroversial, the Senate Judiciary Committee should forgo holding a confirmation hearing. Nominees should be cleared for full Senate confirmation within two months of the receipt of the nomination.

■ Prospective nominees for judicial office should be required to complete a single questionnaire, which supplies all information sought by the various agencies and committees. These entities should explore whether it is necessary or appropriate to obtain all the information presently sought in questionnaires.

■ Congress should enact a statute providing that an additional judgeship is created on the date an incumbent judge becomes eligible for senior status, if the incumbent judge does not take senior status on that date. The number of authorized judgeships would be reduced by one when the incumbent takes senior status, retires, or dies, if the newly created position has been filled.

The commission was composed of present and former federal judges, former White House counsels to Republican and Democratic presidents, former DOJ officials, two former U.S. senators, a prominent attorney, and a law school professor. The co-chairs were former Attorney General Nicholas deB. Katzenbach and former Deputy Attorney General Harold R. Tyler, Jr.

Bobek to Head AO Office of Finance and Budget

Joseph J. Bobek has been appointed assistant director of the Office of Finance and Budget at the Administrative Office. Gregory Cummings will take over Bobek's former position as Budget Division chief.

Bobek has over 30 years of administrative experience in the federal government, including 17 years with the AO. He joined the AO as chief of the Budget Branch, becoming assistant chief, Financial Management Division in 1991, and chief of the Budget Division in 1993. He holds a degree in economics and an MBA in general business administration.

Gregory Cummings joined the AO in January 1994 as deputy chief of the Budget Division. He was formerly with the executive branch of government in the Secret Service from 1974 to 1988 and the Executive Office of



(L to R) Gregory Cummings and Joseph J. Bobek

the President from 1988 to 1994. He holds degrees in economics and accounting.

THE THIRD BRANCH

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Artful Avocation Takes Judicial Turn

Senior Judge Walter Jay Skinner (D. Mass.) began painting about 10 or 12 years ago "as an occupation to fall back on in my old age," he says. After many years of Saturday classes at Boston's Museum of Fine Arts, Skinner has found a way to combine his artistic and legal interests—in a portrait of his late, long-time colleague Judge Charles E. Wyzanski. "Judge Wyzanski, who had been on the court since 1942," explains Skinner, "took senior status in 1971, and I joined the court in 1974. He had the office next to mine for years." In 1986, when Wyzanski died, the jurist's family had commissioned a portrait, but the artist died before completing more than a few charcoal sketches. Skinner approached the family and offered his services.



Judge Walter Jay Skinner displays his portrait of Judge Charles E. Wyzanski.

Working from photos and his own memory, he painted the portrait, which was presented to the court this spring. According to Chief

Judge Joseph L. Tauro (D. Mass.), this may be the first time a judge's portrait, painted by a colleague, has been presented to a federal court.

JUDICIAL MILESTONES

Appointed: Charles Bleil, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Texas, May 3.

Appointed: J.B. Johnson Jr., as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Kentucky, April 24.

Appointed: Robert A. McQuaid Jr., as U.S. Magistrate Judge, U.S. District Court for the District of Nevada, April 15.

Appointed: James D. Moyer, as U.S. Magistrate Judge, U.S. District Court for the Western District of Kentucky, April 29.

Appointed: Susan Russ Walker, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Alabama, April 23.

Elevated: Judge William B. Shubb, to Chief Judge, U.S. District Court

for the Eastern District of California, succeeding Chief Judge Robert E. Coyle, May 13.

Senior Status: Judge Robert P. Aguilar, U.S. District Court for the Northern District of California, April 15.

Senior Status: Judge Richard M. Bilby, U.S. District Court for the District of Arizona, May 29.

Senior Status: Judge William C. Canby Jr., U.S. Court of Appeals for the Ninth Circuit, May 23.

Senior Status: Chief Judge Robert E. Coyle, U.S. District Court for the Eastern District of California, May 13.

Senior Status: Judge Stephen N. Limbaugh, U.S. District Court for the Eastern District of Missouri, May 1.

Senior Status: Judge William H. Stafford Jr., U.S. District Court for the Northern District of Florida, May 31.

Senior Status: Judge Michael A. Telesca, U.S. District Court for the Western District of New York, May 3.

Retired: Senior Judge Richard A. Gadbois Jr., U.S. District Court for the Central District of California, January 24.

Deceased: Senior Judge Charles B. Fulton, U.S. District Court for the Southern District of Florida, May 15.

Deceased: Senior Judge Ronald N. Davies, U.S. District Court for the District of North Dakota, April 18.

Deceased: Senior Judge Don J. Young, U.S. District Court for the Northern District of Ohio, May 10.

FOR THE RECORD...

"[S]hut[ting] down the Clinton nomination process ignores the fact that there are numerous nominees whom Republicans support. . . [I]t is not the job of the Senate to choose judges, and I believe that the Senate must defer to the President's choice, so long as the nominee is qualified, intelligent, experienced in the law, and understands that it is the job of judges to interpret the law, not legislate from the bench."

—Senator Orrin Hatch (R-UT) in a speech before the Republican National Lawyers Association, May 20, 1996

JUDICIAL BOXSCORE

As of June 1, 1996

Courts of Appeals	
Vacancies	14
Nominees	8
District Courts	
Vacancies	53
Nominees	33
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	24

Bureau of Prisons Director Kathleen Hawk Values Judges' Contributions

Kathleen M. Hawk has been director of the Federal Bureau of Prisons (BOP) since 1992. She joined the bureau in 1976, beginning as a staff psychologist at the Federal Correctional Institution in Morgantown, West Virginia, and going on to serve as chief of staff training, warden of the Federal Correctional Institution at Butner, North Carolina, and assistant director for program review. She is the sixth director in the bureau's 66-year history.

Q: Pre-sentence reports (PSRs) are an important way in which the courts communicate with the Bureau of Prisons. To what extent does the Bureau rely on PSRs?

A: To a very great extent. Pre-sentence reports are critical to us in making decisions about inmates, and I am very grateful to the judges and probation officers for sharing them with us.

It would be almost impossible for the bureau to carry out credible designations, institution programming, or pre-release planning without a detailed PSR. Complete information regarding an inmate's current offense, criminal history, medical and other potential program needs, education and job history, family history, and patterns of drug and alcohol abuse, help ensure that we designate the inmate to an institution that has the appropriate level of security and offers programming appropriate to the inmate's needs. PSRs help us in other areas as well, such as determining whether an inmate needs special security or protection as in a witness protection case or national security case. Designation, internal classification, and supervised release planning are fun-

damental to the effective management of our prisons, and PSRs facilitate that process tremendously.

Q: How does the designation process work, and how does the BOP respond to judicial recommendations?

A: We use a point system to determine where an inmate will be designated. The points are assigned for various factors, includ-

"I hope all federal judges are able to visit one or more of our institutions. The more judges see of our institutions, the more they know what we can offer and what we are all about."

ing the seriousness of the current offense, severity of detainers, expected length of incarceration, type of prior commitments, and history of escapes and violence. We call this process objective classification, because if the numbers add up to a penitentiary, that is where an inmate will go—no matter who that inmate is.

The goals of our designation system are to place offenders at facilities providing appropriate security that are as close as possible to their homes, to maintain balance in the inmate population throughout the system, and to use BOP resources wisely by ensuring that inmates requiring only low security are not housed in higher security institutions that cost more to operate.

We take very seriously judicial recommendations that an inmate be placed in a particular institution or a particular type of institution. In fact, we comply with about 80 percent of the recommendations.

When we cannot comply, it is generally because there is not enough bed space in the recommended institution or because the mix of programs at the recommended institution does not meet the inmate's needs or because we have security concerns. We cannot place somebody in a minimum security camp, for example, if the factors we use to classify an offender objectively indicate designation to a higher security facility. In every case

like this, we write to the judge to explain our decision.

Q: Do you have any suggestions that would help the judges in making these kinds of recommendations?

A: Well, as I said, every recommendation is taken very seriously. If a judge simply writes a letter, we will definitely act upon it.

Beyond that, however, there are two things that judges might consider as a way to help the process along. First, judges or court staff should feel free to contact BOP community corrections managers serving their district. Community corrections managers can provide assistance and information on the designations process, institutions, programs, security levels—whatever the judges need to develop their recommendations.

Second, the more information

judges can give us about what they want us to do in a particular case and why they want an offender to be placed at a particular institution, the better able we are to respond appropriately. And, to repeat what I said earlier, the pre-sentence report is the perfect vehicle. A detailed PSR can convey the rationale for designating and classifying an inmate, and, ultimately, can be helpful as background or supporting documentation for any recommendations made in the Judgment and Commitment Order.

Q: What about designations to boot camps? How are they handled? Can judges recommend boot camp placement?

A: Of course. But these programs have very limited space and very focused intent, and we are very grateful when judges take these constraints into consideration when making recommendations.

The Bureau operates Intensive Confinement Centers, or ICCs, at our facilities in Lewisburg [Pennsylvania] and Bryan [Texas], for men and women, respectively. We will have another ICC for men coming on line later in the year, at Lompoc [California]. These Intensive Confinement Centers are similar to the boot camps in some state systems, but combine rigorous discipline with intensive programming in areas such as education and life skills.

We have specific guidelines as to what sorts of inmates will be considered for ICC placement. They must be minimum security inmates, and their offenses should not involve weapons. Moreover, the ICC program is intended explicitly to provide life skills training to individuals who lack direction and self-discipline. Just because someone is a white collar or non-violent first offender does not mean that he or she



Kathleen M. Hawk

is a candidate for ICC placement. The focus of ICC programs is to provide inmates with opportunities to reshape their lifestyles.

Because the ICC program addresses such specific needs, I urge judges to be selective in recommending that inmates be placed in ICCs.

Q: Is the Bureau able to provide sufficient space in halfway houses, or Community Corrections Centers (CCCs), to use for alternative sanctions?

A: When we negotiate and award contracts for CCCs, we make every effort to ensure that there is sufficient bed space to meet the needs of the local court. Occasionally, there are circumstances that make this difficult, but generally we have been successful. In addition, through the Comprehensive Sanctions Center program, the BOP is implementing a program designed specifically to provide a viable community-based program for probation and supervised release violators. This was done primarily because many federal judges had indicated a strong need for such an alternative.

Q: How is the bureau's drug treatment program structured, and what drug treatment programs are available to inmates?

A: Several years ago, the Bureau developed a state-of-the-art drug treatment program, in conjunction with the National Institute on Drug Abuse. We screen all incoming inmates to determine what level of drug abuse treatment they need, if any. Available programs range from drug abuse education courses, to non-residential counseling, to residential drug treatment during the last months of an inmate's sentence in special drug abuse treatment living units, to aftercare within the prison following residential treatment, to community-based aftercare following release.

However, unless an inmate's history of drug abuse or drug-related criminal activity is fully explained in the PSR, we have a very difficult time verifying an inmate's self-reports of drug abuse and matching that inmate to the proper level of drug treatment.

Q: Last October, a number of disturbances flared up at BOP institutions across the country. Have you reached any conclusions yet as to the causes?

A: After extremely intensive reviews of what happened, we believe that the initial disruptions were triggered by news reports that Congress would not lower crack penalties to equal penalties for powder cocaine. The disturbances spread because of widespread inmate perceptions that sentencing laws are unfair and because inmates were already agitated over such issues as mandatory minimum sentences, loss of funding for certain prison programs, and media reports of racial biases in sentencing and

See Interview on page 12

Interview continued from page 11
prosecution. Another contributing factor was that so many of our inmates were serving lengthy, non-parolable sentences for drug and weapon offenses, and had gang associations or histories of violence. Finally, the violence spread as inmates in one institution learned via the media of other disturbances and decided to show support for fellow inmates.

It is important to note what did not cause the disturbances: our investigations found that the issues were not over internal management, crowding, or other conditions of confinement. BOP staff responded magnificently to the situation, and many of them suffered injuries. Because of their outstanding efforts and because our emergency response procedures worked well, there were no deaths during the disturbances, no staff were taken hostage, no inmates escaped, and public safety was never jeopardized because in each case institutions were able to maintain their secure perimeter.

Q: Will you be making any changes in light of the disturbances?


A: We learned lessons from the disturbances and now we are proceeding to refine various emergency operations; for example, we will improve the organization of command centers, the use of equipment, and procedures for liaison with other law enforcement agencies. We also are working on improvements in our unit management system, to better communicate with and supervise inmates, and developing additional tactical response options and emergency training. We've also relocated 700 inmates requiring higher levels of security, strengthened physical security at our institutions, and accelerated an on-going review of our classification system.

Q: Are judges encouraged to visit BOP facilities?

A: By all means. I hope all federal judges are able to visit

one or more of our institutions. The more judges see of our institutions, the more they know what we can offer and what we are all about. When they sentence somebody to our custody, they will know exactly what will happen to those offenders. Also it opens up lines of communication. The bureau's mission is to carry out the sentences of the courts, and the more judges see of our operations, the better they will know—and can let me know—how well we are doing.

Any judges wishing to tour a federal prison should not hesitate to call my office to make arrangements or to call the appropriate BOP regional office or institution.

Judges are also welcome to visit Community Corrections Centers, or halfway houses, whenever they want. The local community corrections manager or chief of the U.S. Probation Office can arrange visits at any time that would be convenient. 

THE THIRD BRANCH

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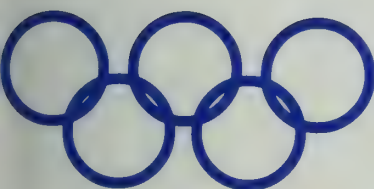
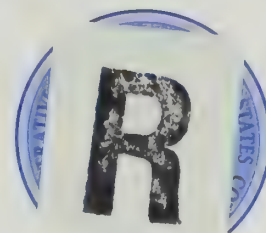
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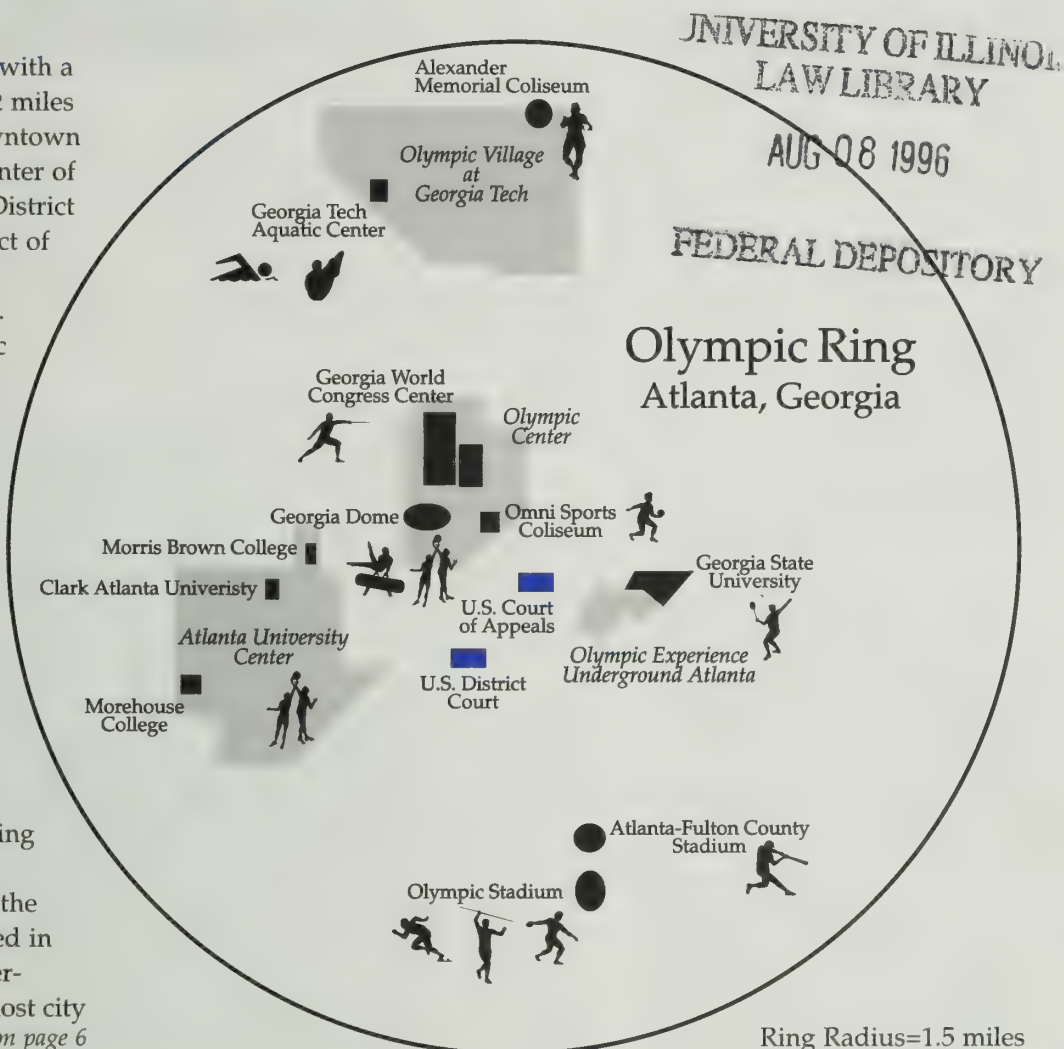


Olympic-size Hurdles Face Courts in Atlanta

Draw an imaginary circle, with a radius of approximately 1 1/2 miles extending outward from downtown Atlanta, Georgia. Near the center of this Olympic Ring place the District Court for the Northern District of Georgia and the Court of Appeals for the Eleventh Circuit. Scatter venues for 20 Olympic sports events, the main press center, and the Olympic Village within that circle. Add 600,000 visitors from all over the world, every day, for 17 consecutive days during the 1996 Summer Olympic Games. Close many of the downtown streets, then increase the number of city buses from 350 to 2,000. Fill every hotel room. Now imagine trying to conduct judicial business during the 1996 Summer Olympics.

Both the district court and the court of appeals headquartered in Atlanta are bowing to the overwhelming reality of playing host city

See *Olympics* on page 6



Ring Radius=1.5 miles

INSIDE

Courts Face Record-setting Workloads	2	Parole Commission Extension Urged	7
Courts Improvement Bill Introduced	3	New Executive Committee Chair Named	9
Senior Judges Provide Invaluable Service	5	U.S. Attorney Head Interviewed	10

Record-setting Workloads Confront Federal Courts

Federal judges today are faced with unprecedented levels of work. Their daily challenges are compounded by the fact that no new judgeships at any level of the federal courts have been created in nearly four years. While there have been small declines in discrete areas of workload, by and large federal judges across the board and across the country are facing a greater number of cases this year than last and, in some instances, are encountering record levels of work.

"The demands placed on United States judges today are staggering," said Leonidas Ralph Mecham, Director of the Administrative Office. "Jurists at virtually every level of our federal system are facing a greater number of cases, which involve increasingly complex issues, explore novel areas of the law, and consume a larger portion of their time." The following are some examples.

- There were nearly 48,000 more cases filed in the U.S. district courts in 1995 than in 1990.

- The number of civil rights cases filed in U.S. district courts jumped 86 percent in the last five years.

- During calendar year 1995 national filings for immigration-related offenses rose by 58 percent over the preceding year. In the U.S. District Court for the Southern District of California alone, immigration filings nearly tripled over the past 12 months.

- Due in part to breast implant litigation, the number of personal injury/product liability cases filed nationwide climbed 125 percent from the 12-month period ending March 31, 1995, compared to the corresponding period in 1996.

- Filings in U.S. bankruptcy courts are at record levels. In April 1996, monthly bankruptcy filings ex-

ceeded 100,000 for the first time ever. Annual bankruptcy filings likely will top one million in 1996—the highest level ever.

- Approximately one-third of all cases filed in the U.S. courts of appeals are prisoner petitions—jumping by nearly 4,700 over the past five years.

- The number of criminal cases filed in the U.S. courts of appeals has nearly doubled from 1987 until 1995.

- For the nation as a whole, three-judge court of appeals panels in 1995, on the average, considered 122 more cases than in 1990.

- There currently are 14 vacancies in the U.S. courts of appeals and 55 in the U.S. district courts. No federal judges have been confirmed since January 2, 1996.

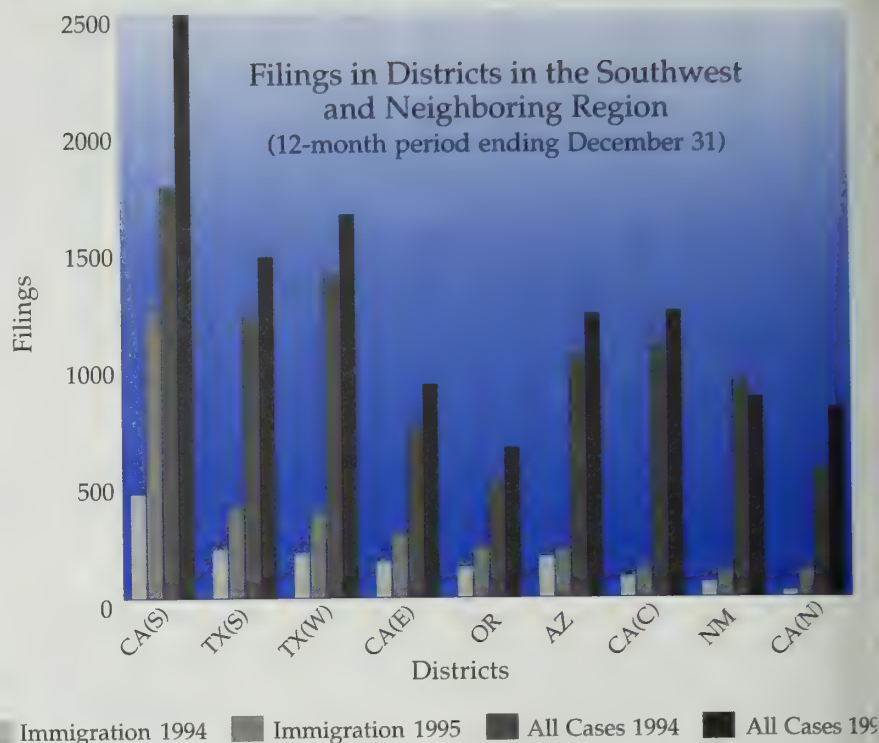
- There have been no new appellate or district court judgeships created since December 1990 and no new bankruptcy judgeships established since August 1992.

The AO recently studied trends in civil rights filings and criminal immi-

gration filings in U.S. district courts. Summaries of the findings follow.

Immigration

Criminal filings in federal district courts for immigration-related offenses such as reentry after deportation, drug smuggling, documentation fraud, and immigration smuggling jumped 58 percent during calendar year 1995. Of this increase in filings, 97 percent occurred in nine districts: the District of Arizona, Central District of California, Eastern District of California, Northern District of California, Southern District of California, District of New Mexico, District of Oregon, Southern District of Texas, and Western District of Texas. In the Southern District of California, immigration filings nearly tripled from 441 in 1994 to 1,222 in 1995. This trend in growth is expected to continue as the Department of Justice and Congress place greater emphasis on aggressive immigration policies and add to the number of border patrol agents.



New Courts Improvement Bill Introduced in Senate

Last month a new Federal Courts Improvement Act of 1996 was introduced in the Senate by Senators Charles E. Grassley (R-IA), Howell Heflin (D-AL) and Orrin Hatch (R-UT). S. 1887 is substantially the same as the courts improvement bill transmitted to Congress by the Judicial Conference in March 1995, and a House version of the bill, H.R. 1889, introduced by Representative Carlos

Moorhead (R-CA) early in 1996.

Among other provisions, the Senate bill would:

- repeal legislation (section 140 of Public Law 97-92) barring annual cost-of-living adjustments in pay for federal judges, except as specifically authorized by Congress;

- increase the civil filing fee from \$120 to \$150, as recommended by the Judicial Conference, with the

first \$90 (rather than \$60) of each fee to be deposited in a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the U.S. courts;

- authorize magistrate judges to try petty offense cases without the consent of the defendants and to try misdemeanor cases upon either written or oral consent of the defendant on the record;

- raise the jurisdictional amount from \$50,000 to \$75,000 in diversity jurisdiction cases;

- revise senior judge work certification procedures to give retroactive credit for resumption of a significant workload by an inactive judge;

- authorize the carrying of firearms by judicial officers and by probation officers; and

- change the way in which the chief judge of the Court of International Trade is selected to conform to the system in other Article III courts.

S. 1887 also contains several new provisions, some of which would do the following:

- Extend the Civil Justice Expense and Delay Reduction Reports' due date from December 31, 1996, to June 30, 1997, for demonstration and pilot programs.

- Abolish the Special Court created by the Regional Rail Reorganization Act of 1973, with all jurisdiction and other functions of the court to be assumed by the U.S. District Court for the District of Columbia.

- Amend procedures for the reappointment of bankruptcy judges so that incumbent judges may be considered.

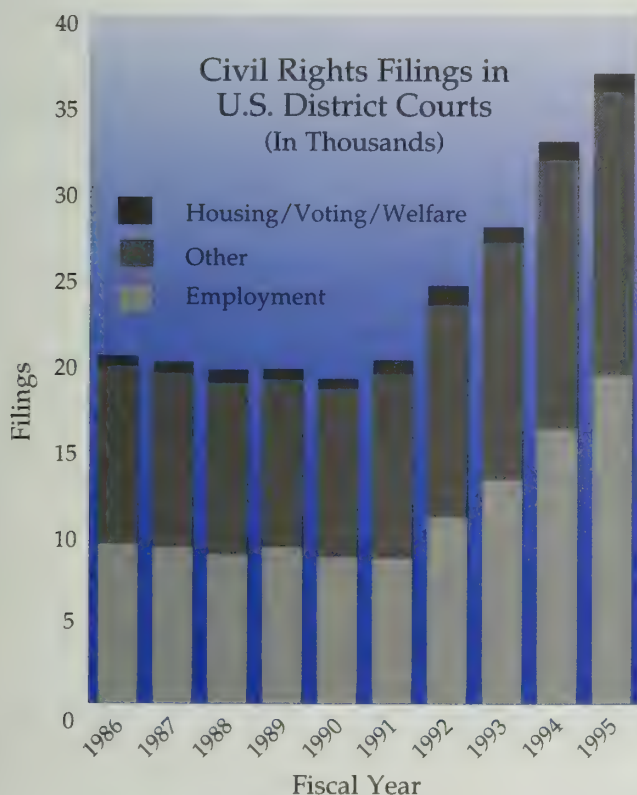
- Provide for the appointment of trustees by a bankruptcy administrator, and give the bankruptcy admin-

See Improvements on page 4

Civil Rights

The rapid increase in the number of civil rights cases filed started shortly after the last Article III judgeship bill was signed into law in December 1990. In the previous five years, civil rights filings were relatively stable with only small fluctuations. The recent increase was driven largely by cases related to employment civil rights, which rose 126 per-

cent from 1991 to 1995. Recent civil rights legislation—in particular the Civil Rights Act of 1991 and the Americans with Disabilities Act of 1990—is largely responsible for this increase. When weighted for complexity, the increase in the number of civil rights filings equates to 55 district court judgeships and likely would have an impact also on the courts of appeals. ⚖️



Representative Hyde Meets With Federal-State Jurisdiction Committee

Speaking last month to the Judicial Conference Committee on Federal-State Jurisdiction, Representative Henry Hyde (R-IL) told the assembled state and federal judges, "Some of the problems we confront today simply are too pervasive and threatening for either the federal government or the states, acting alone, to solve." As chair of the House Judiciary Committee, Hyde noted that the interface between federal and state prerogatives is a subject of keen interest to both committees, and that, "Each of us, in our respective roles, recognizes the need for coordination between the federal government and the states to avoid squandering the people's limited resources." Hyde spoke to the Conference committee at the invitation of its chairman, Judge Stephen H. Anderson (10th Cir.).

Hyde cited criminal activity and efforts to make a safer society as examples of areas with overlapping state and federal roles. He men-



(L to R) Judge Stephen H. Anderson (10th Cir.) and Representative Henry Hyde (R-IL)

tioned several other initiatives, including recent legislation on church burnings, the rights of crime victims, and medical malpractice, where federal intervention could effect change. And, while Hyde recognized the Judiciary's concern over federalization of traditionally state

issues, he noted that not all federal legislation increases the burden on federal courts. As an example, he pointed to recent federal legislation on product liability that would reform the law without burdening the Judiciary.

In concluding his remarks, Hyde said, "Our two Committees have a common interest in promoting the independence, integrity, and efficiency of the Judiciary—at both the federal and state levels. Disputes between the executive and legislative branches over budgetary priorities must never be permitted to compromise the judicial function. My colleagues on the Committee on the Judiciary share with me a deep commitment in keeping the courts fully operational. We recognize the rule of law in our society depends on your ability to hear and decide cases."

Hyde welcomed the special expertise judges bring to issues involving court operations, and said members of Congress need to be familiar with the challenges judges face in trying to decide increasing numbers of cases fairly and expeditiously.

Improvements continued from page 3
istrators authority to set compensation rates and determine duties of trustees.

- Clarify which judgeships created by P.L. 101-650 in the Eastern District of Pennsylvania and the Eastern District of Missouri are temporary and which permanent.

- Extend authorization for appropriations to the Judiciary until fiscal year 1998 to conduct arbitration in civil actions.

The Senate bill does not include a provision changing the "Rule of 80," which addresses the requirements for taking senior status by justices and Article III judges by authorizing judges to take senior status at age

60, providing they have 20 years of service. Also deleted from the Senate bill are provisions repealing in-state plaintiff diversity jurisdiction, and providing for the reimbursement of the Judiciary for expenses connected with adjudication of asset forfeitures. The bill also does not address the Judiciary's need for the creation and funding of new federal public defenders offices in approximately 20 districts.

It is anticipated that the new bill, S. 1887, will be voted out of the subcommittee in mid-July. The full Judiciary Committee may mark up the bill later this month. The House also is expected to begin moving its bill in mid-July. ⚡

Judge Elbert Tuttle Exemplified Contributions of Senior Judges

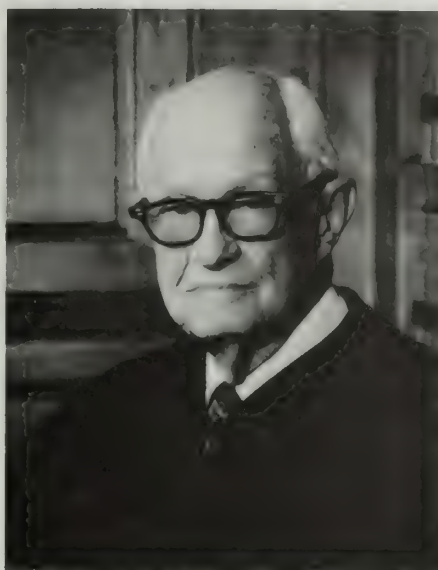
Senior Judge Elbert P. Tuttle (11th Cir.), who died last week at the age of 98, was believed to be the oldest working federal judge in the history of the country. Tuttle authored his last opinion about a year ago, and as recently as eight months ago, helped the busy U.S. Court of Appeals for the 11th Circuit screen cases.

"Judge Tuttle—a giant in the fight against segregation—in his later years became an extraordinary example of the invaluable work performed by senior United States judges," said Administrative Office Director Leonidas Ralph Mecham. "For the past 28 years, Judge Tuttle has been working as a volunteer. He could have retired at the age of 69, proudly looked back on a long and distinguished career as a jurist, and received a full annuity. But he didn't. Instead, each day Judge Tuttle went to his office in the courthouse that bears his name and continued his commitment to public service."

Today there are nearly 400 senior judges. At the court of appeals level, senior judges participate in almost 4 percent of all oral hearings. At the district court level, 19 percent of all trials conducted were presided over by senior judges. (See chart on right.)

For the 12-month period concluded March 31, 1996, senior U.S. district court judges performed the work equivalent to 109 active trial court judges. Some districts that have a large number of judicial vacancies have been able to keep up with their caseloads solely because of the contributions of senior judges.

The work performed by senior judges is an integral part of the effort to manage efficiently the dockets of many courts. In fact, a study by the AO in 1993 found that "senior judges are an indispensable resource in the efficient management of the



Judge Elbert P. Tuttle

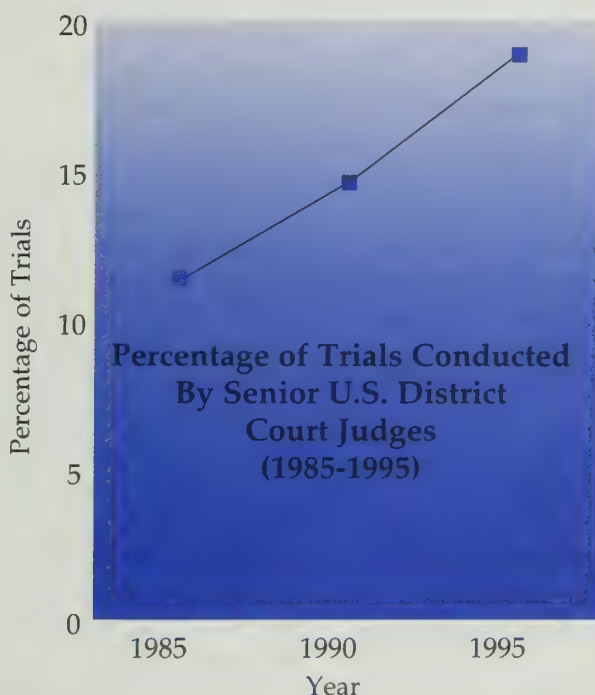
caseload in the district courts, especially with regard to civil cases." The study concluded, "If justice delayed is justice denied, then justice would be denied to thousands of Americans every year without the service of the senior judges in the U.S. district courts."

U.S. court of appeals or district judges who are on senior status con-

tinue to hold office but are no longer expected to work full-time. A judge may take senior status when he or she reaches the minimum age of 65 and has 15 years of service.

"It is a fact that were it not for the work of senior judges, the United States courts would be drowning in their workload," Mecham said. "Judge Elbert Tuttle was a stalwart in the able and dedicated corps of senior judges."

Born in 1897, Judge Tuttle was appointed to the U.S. Court of Appeals for the Fifth Circuit (which later was divided into the Fifth and Eleventh Circuits) in 1954 by President Eisenhower. He served as the Fifth Circuit's chief judge from 1960 to 1967. Tuttle was awarded the Presidential Medal of Freedom, the Edward J. Devitt Distinguished Service to Justice Award, and the Legion of Merit Bronze Star and the Purple Heart with Oak Leaf Cluster for service during World War II.



Olympics continued from page 1
to the Olympics. According to Circuit Executive Norman E. Zoller, "We first considered moving the court of appeals, but it involved three to five postal vats of mail daily, 130 people and their computers, and 6,000 files on pending cases. It didn't seem worthwhile. So we've adopted a modified workday schedule. Beginning July 8, we'll be open to the public from 7:00 a.m. until 3:00 p.m., Monday through Friday until at least August 4." The court will conduct emergency hearings if

rather than commute into Atlanta.


Business at the courts will go on, but not as usual. The U.S. Postal Service may not deliver all mail during the day when Olympic activity is expected to create gridlock on downtown streets, so a court night shift working from midnight to 6:00 a.m. will handle incoming and outgoing mail. Court staff have been encouraged to take summer vacations and use flexible schedules. With no private parking within a 3-mile radius of downtown Atlanta, court employees who must commute downtown

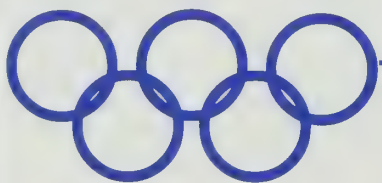
water polo.

The Olympics has already made its presence felt inside the courthouse. "We've had some infringement cases filed on the Olympic logo," said Shope. "The Olympic Committee is understandably very protective of its logo. We've also had a preliminary injunction hearing on an athlete disqualified from qualifying." More cases have the potential to arise during the Olympics because with 35,000 "official visitors," a status granted by the State Department, any crime committed against these visitors could be a federal offense.

Neither courthouse will be on any list of Atlanta sight-seeing stops for Olympic visitors because security remains a concern. Both the district and appellate court have developed emergency disaster plans and access to the district courthouse will be limited. Anyone with business at the court will have to sign in and be issued a visitor's pass. In addition, digital phones have been substituted at the courthouse for analog phones because the existing analog phone system is expected to be hard-pressed during the Olympics. A radio system will back up communications should the telephone system become overloaded.

"It's kind of an exciting time," Shope observed, "I just wish we were a few hundred miles away so we could enjoy it."

And after the Olympics conclude, the city enjoys a brief respite for ten days. Then the 1996 Atlanta Paralympic Games, the second largest sporting event in the world, begins. They're only one-third the size of the Olympic Games. 



To visualize Atlanta during the games, say organizers, imagine three Super Bowls, the World Series, and two basketball championships occurring every day.

necessary, but probably will rely on other places of holding court outside the Olympic Ring.

The district court also will switch to the 7:00 a.m. until 3:00 p.m. workday. With nearly all available interpreters working at the Olympics, a district court coup has been to lock in the services of a full-time, Spanish language interpreter in the event a case-related need arises.

"We'll suspend some rules and allow attorneys to file at any court division," said John Shope, district court executive. "If we absolutely have to go to trial, it will be in one of our divisions, probably Rome, Georgia. Our Gainesville division is also the location of the smooth water Olympic events." Without interfering with court activities, some unassigned space at the Gainesville courthouse has been set up with cubicles where employees from several federal agencies can teleconference

will use a special shuttle service.

To visualize Atlanta during the games, say organizers, imagine three Super Bowls, the World Series, and two basketball championships occurring every day. From his office window, Shope can see the Georgia Dome, where gymnastics and basketball events will be held. Between the courthouse and the dome, Olympic planners have built a public park to hold thousands of visitors. The Olympic Park, three blocks away, will accommodate 300,000 people. The Olympic media headquarters is setting up shop almost in the court's backyard, and is expecting 60,000 members of the press. A few blocks away is the Georgia World Congress Center, where seven different Olympic sports competitions are planned. The district courthouse is 12 blocks from the Georgia Tech Aquatic Center, which will host swimming, diving, synchronized swimming, and

JULY

- 19-20** Friday-Saturday
Committee on the Budget
- 22-23** Monday-Tuesday
Committee on Financial Disclosure

AUGUST

- 12-13** Monday-Tuesday
Executive Committee
- 19-22** Monday-Thursday
Ninth Circuit Conference
- 28-30** Wednesday-Friday
Workshop for Judges of the 6th and 8th Circuits
- 28-30** Wednesday-Friday
Workshop for Magistrate Judges of the 5th, 8th, 11th,
and D.C. Circuits

CLERK OF COURT, Fourth Circuit

The Clerk of Court has administrative responsibility for direction of Clerk's Office operations, including planning, budgeting, case management, records management and financial, personnel and automation management. The Clerk's Office provides support to thirteen active and three senior judges and their staffs. Applicants must possess a minimum of 10 years of progressively responsible administrative experience in public service or business, which provides a thorough understanding of organizational, procedural and human aspects in managing an organization. At least three years' experience must have been in a position of substantial management responsibility. Higher education and active law practice may substitute for required administrative or management experience. The position is presently graded at JSP 16-17 (\$82,871 to \$112,528). Application deadline is **September 1, 1996**. Contact Bert M. Montague, U.S. Court of Appeals for the Fourth Circuit, 1100 E. Main Street, 5th Floor, Richmond, Virginia 23219, (904) 771-2213, for further information.

CLERK OF COURT, Northern District of Illinois

This metropolitan court headquartered in Chicago with a divisional office in Rockford seeks an experienced administrator for the position of Clerk of Court. The Clerk serves as the court administrator and is responsible for administrative management of non-judicial functions of the court. Applicants must have a minimum of ten years of management experience of increasing responsibility. Substantial experience in personnel and budget management is required. Experience in federal judicial administration is desirable but not mandatory. Applicants must have an undergraduate degree. A professional degree in law, business administration or public administration is desirable. Salary: \$100,467 - \$116,456. An original and five copies of the cover letter and resume must be sent to H. Stuart Cunningham, P.O. Box A3595, Chicago, IL 60690. Closing date for application is **August 23, 1996**.

CLERK OF COURT, Court of International Trade

Applications are being accepted for the position of Clerk of Court for the United States Court of International Trade. The Clerk of Court functions as the court's administrative officer and is responsible for all nonjudicial operations of the court. Salary: JSP-16/1, \$87,821 to JSP-17/10, \$116,910. A bachelor's degree, and ten years of successful and progressively responsible experience in managing a public or business organization are required. A law degree, admission to practice, and several years of litigation are desirable. For further information and application procedures, call the personnel specialist at (212) 264-1799. Applications will be received until **August 30, 1996**. The position will remain open until filled.

CHIEF PRETRIAL SERVICES OFFICER, Eastern District of Missouri

The Eastern District of Missouri has eight district judges and seven magistrate judges. The Pretrial Services Office is headquartered in St. Louis with a staffed divisional office in Cape Girardeau. The Chief Pretrial Services Officer manages a staff of 13, and is responsible for the administration and management of pretrial services functions and the duties associated with the pretrial diversion program to the district. To apply, send a resume by **August 1, 1996**, to the Honorable Jean C. Hamilton, Chief Judge, United States District Court, 1st Fl., 1114 Market Street, St. Louis, MO 63101. The person selected will be required to undergo a full FBI background investigation.

EQUAL OPPORTUNITY EMPLOYERS

Judiciary Urges Extension of Parole Commission

The U.S. Parole Commission, which is scheduled to cease operation next year, should either be continued or a successor agency should be created within the executive branch, a representative of the Judicial Conference of the United States told a House subcommittee last month.

The commission is a highly specialized organization with a unique mission," said Judge Richard J. Arcara (W.D. N.Y.), a member of the Judicial Conference's Criminal Law Committee. "Over the decades, it has acquired an efficiency and expertise of which we should take full advantage. In this age of fiscal responsibility, it would be a shameful waste of precious resources to do otherwise." Arcara testified before the House Judiciary Subcommittee on Crime, where he represented the Judicial Conference.

Under S. 1507, the Parole Commission Reorganization Act of 1995, passed the Senate late last year. The bill proposes a 5-year extension of the Parole Commission to November 1, 2002, as well as a gradual reduction in the size and budget of the commission.

The Sentencing Reform Act of 1984 eliminated eligibility for parole for all federal crimes committed on or after November 1, 1987. To deal with parole-eligible offenders who committed crimes before that date, Congress continued the commission until November 1, 1992. Because there was a need for ongoing parole hearings, the life of the commission was extended until November 1, 1997. The Judicial Conference supports an additional 5-year extension of the commission until 2002. Earlier this year, the Administrative Office and the commission produced a joint report on the feasibility of transferring the commission's functions to the federal Judiciary.



(L to R) Judge Richard J. Arcara (W.D. N.Y.) and U.S. Parole Commission Chair Edward F. Reilly, Jr. testified before a House Judiciary subcommittee.

The following are among the highlights of the report:

- The commission function must continue. Without it, parole-eligible inmates who are entitled to parole rights would inevitably file habeas corpus petitions seeking release on the ground that their right to a determination or review of their final parole release dates had been unconstitutionally eliminated. In addition, no authority would exist to review and rescind the release dates of inmates who engage in misconduct.

- The most expedient and cost-effective means of ensuring performance of necessary ongoing parole functions is a simple 5-year extension of the commission. Because of the diminishing number of parole-eligible prisoners, in the year 2002 it will be easier to predict a suitable solution to deal with them. At the end of fiscal year 1996, there will be approximately 6,700 parole-eligible prisoners. In five years, the number should decrease to 2,100, many of whom will be nearing the end of their terms.

- Transfer of commission functions to the federal Judiciary would

be costly, inefficient, and result in a dilution of already scarce judicial resources. In addition, the assumption by the courts of responsibility for parole hearings, revocation hearings, and appeals would be disruptive and would have a detrimental impact on the administration of justice. Transfer of parole release hearings to the Judiciary would increase the overall costs of performing essential commission responsibilities.

Arcara stated, "The Judicial Conference, pursuant to a recommendation of the Federal Courts Study Committee, has endorsed the continuation of the commission or the creation of a successor agency within the executive branch to perform the commission's functions. Although either approach is satisfactory to the Conference, I would urge you to carefully consider the extension of the commission for five years as proposed under S. 1507."

JUDICIAL MILESTONES

Appointed: Michael S. McDonald, as U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, June 8.

Appointed: Margaret B. Seymour, as U.S. Magistrate Judge, U.S. District Court for the District of South Carolina, May 19.

Appointed: E.S. Swearingen, as U.S. Magistrate Judge, U.S. District Court for the District of South Carolina, May 21.

Appointed: Carol Sandra Moore Wells, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Pennsylvania, June 3.

Appointed: Carla M. Woehrle, as U.S. Magistrate Judge, U.S. District Court for the Central District of California, June 10.

Senior Status: Judge William M. Acker Jr., U.S. District Court for

the Northern District of Alabama, May 31.

Senior Status: Judge David D. Dowd Jr., U.S. District Court for the Northern District of Ohio, June 30.

Senior Status: Judge Richard A. Gadbois, Jr., U.S. District Court for the Central District of California, January 24.

Senior: Judge William T. Hart, U.S. District Court for the Northern District of Illinois, June 1.

Retired: Chief Bankruptcy Judge Paul B. Lindsey, U.S. Bankruptcy Court for the Western District of Oklahoma, June 21.

Retired: Magistrate Judge F. Owen Eagan, U.S. District Court for the District of Connecticut, June 6.

THE THIRD BRANCH

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FOR THE RECORD...

"When places on the bench are not filled promptly, backlogs increase, and civil litigants, defendants and victims all must wait for justice.

[Senate leaders Trent] Lott and [Tom] Daschle are off to a good start in working out a schedule for Senate business. The confirmation of judges should be high on their list. Record votes should be scheduled if needed, but no single senator ought to be able to hold up the entire process."

—*Washington Post* editorial, July 10, 1996

JUDICIAL BOXSCORE

As of July 1, 1996

Courts of Appeals	
Vacancies	14
Nominees	8
District Courts	
Vacancies	55
Nominees	34
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	24

Hodges to Chair Executive Committee



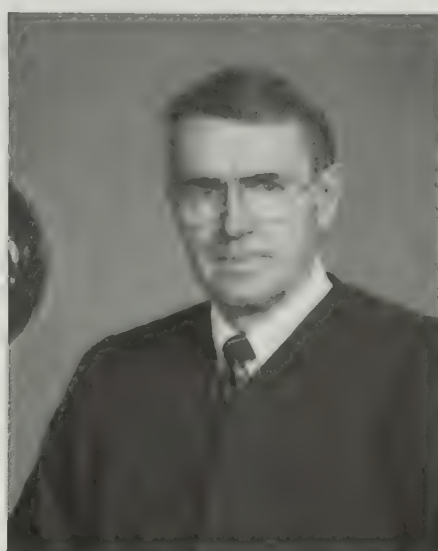
Judge Wm. Terrell Hodges

Chief Justice William H. Rehnquist has appointed Judge Wm. Terrell Hodges (M.D. Fla.) as the new chair of the Executive Committee of the Judicial Conference, which is the Conference's senior executive arm. Hodges, who has been a member of the committee since October 1994, will succeed Chief



Chief Judge Henry A. Politz

Judge Gilbert S. Merritt (6th Cir.) on October 1, when his term on the committee expires. Also effective October 1, the Chief Justice has named to the committee Chief Judge Henry A. Politz (5th Cir.) and Judge Lloyd George (D. Nev.). They replace Merritt and Judge Clifford Wallace (9th Cir.), who stepped



Judge Lloyd George

down as chief judge earlier this year.

Also serving on the Executive Committee are Chief Judge Glenn L. Archer (Fed. Cir.), Chief Judge Richard S. Arnold (8th Cir.), Judge Clarence A. Brimmer (D. Wy.), Chief Judge Michael M. Mihm (C.D. Ill.), and Administrative Office Director Leonidas Ralph Mecham.

Conference Seeks Changes in Public Building Reform Bill

The Judicial Conference has agreed by mail ballot to adopt the recommendations of the Conference's Security, Space and Facilities Committee on S. 1005, the Public Building Reform Act of 1996. The bill, as presently written, would authorize the General Services Administrator, in consultation with the director of the Administrative Office, to develop design guides and standards for federal court accommodations. The committee recommended that S. 1005 be amended to allow the judicial branch to continue to establish its own design guides and housing standards. The Judiciary presently issues the *U.S. Courts Design*

Guide, first approved by the Judicial Conference in 1991, which is periodically reviewed and amended. The bill's provision for public comment on design guidelines would also involve the judicial branch in the unprecedented role of participating in a formal executive branch administrative rulemaking process.

The Senate passed S. 1005 in May. (See *The Third Branch*, June 1996). A House bill on public building reform is being drafted and could be introduced in September.

The Senate bill also proposes that federal entities reduce their space requirements by 10 percent. It is the Conference's position that in light of

the increases in caseload—including increases in jurisdiction and the recent upturn in bankruptcy filings—as well as the judicial branch's role in the administration of justice, it is unlikely that the Judiciary will be able to contribute significantly to an overall government-wide space reduction effort.

Provisions in S. 1005 also may create conflicts with the authority already vested in the Architect of the Capitol. The Conference adopted the committee's recommendation to seek clarification to exclude buildings occupied by the judicial branch on Capitol Hill in Washington, D.C., from any provision of the bill.

Carol DiBattiste Coordinates U.S. Attorneys' Efforts Nationwide

Carol A. DiBattiste was named director of the Executive Office of U.S. Attorneys in 1994. She was previously principal deputy general counsel for the Department of the Navy, and from 1992-93, director of the Office of Legal Education, Executive Office for U.S. Attorneys.

Q: What is the role of the Executive Office for United States attorneys? How does it coordinate the work of the different United States attorneys' offices?

A: In a way, my office is similar to the combined roles of the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the Judicial Conference. We provide the administrative and budget support to operate the 94 United States attorneys' offices, provide extensive legal training to assistant United States attorneys and support staff, and support the operation of the Attorney General's Advisory Committee (AGAC), which is a select group of United States attorneys, who represent the U.S. attorneys on policy to the Department and the Attorney General.

Coordination is accomplished primarily through the *United States Attorneys' Manual*, our compendium of regulations and policies, various publications such as the *United States Attorneys' Bulletin* and a daily electronic newsletter on significant cases called OVERNITE, as well as other daily electronic mail and memoranda. Between my staff and I, we are also in telephone contact with almost every district several times a week, relaying or gathering information. Finally, the AGAC meets monthly with the Deputy Attorney

General and the Attorney General to discuss policy issues and has more than 20 subcommittees and working groups, which include many of the other U.S. attorneys.

Q: How would you describe the relationship between judges and United States attorneys on a national and local level?

A: On a national level, I think we are finding new ways to

interviews have shown a very good working relationship between our offices and the courts.

Q: Congress has increasingly made federal crimes out of what were state crimes. How do United States attorneys view federalization?

A: The views of United States attorneys vary on this question.

"In a way, my office is similar to the combined roles of the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the Judicial Conference."

cooperate and work together. Last year, I was asked to appear with the Judiciary's representatives when they testified before the House Appropriations Subcommittee on their budget. The chair of the subcommittee urged that we work together on issues from video teleconferencing to courthouse space utilization. We have pledged to do that. Recently, for example, my staff has been working with the Bureau of Justice Statistics, the Administrative Office, and the U.S. Sentencing Commission on a common statement explaining the differences in our statistical records and reconciling these differences.

On the local level, when our evaluation teams visit each district, as they do every two to three years, the evaluators contact and interview judges and magistrate judges, asking for their views and experiences in dealing with the United States attorney's office. Generally, those in-

Here are four perspectives of United States attorneys from large, medium and small districts:

"The so-called 'federalization' of state crimes has been driven by our nationwide violent crime crisis. . . Thoughtful legislation has enhanced penalties for drug-related violence and has generally provided federal law enforcement, and particularly prosecutors, with tools necessary to compliment the efforts of state and local police and prosecutors."

Zachary W. Carter (E.D. N.Y.)

"Federalization without sufficient resources is counterproductive. . . Because [the resources of local governments] are strained and unevenly applied, the federal government has become increasingly the court of last resort for addressing these problems. While the federal government's involvement in these areas may be debatable, all should agree that it is illogical to assume the

federal government is going to do a better job with less resources.”
Veronica F. Coleman (W.D. Tenn.)

“The federalization of traditionally state crimes has created more options for prosecutors and law enforcement and has forced us to work more closely with the state and local law enforcement authorities. We have to work together to decide in which court the prosecution should proceed. However, while I as a prosecutor like having these added options, there is an increased burden upon the federal law enforcement agencies that have to investigate the new federalized crimes.”

Redding Pitt (M.D. Ala.)

“Although federalization has increased the workload of federal prosecutors and investigators, targeting major violent criminals in federal court has had a measurable impact, particularly on recidivists. Federal interest has to be carefully weighed by the prosecutors in individual cases.”

Katrina C. Pflaumer (W.D. Wash.)

Q: A growing emphasis has been placed upon crime control by both the executive and legislative branches. How are United States attorneys responding to this emphasis? Are there any special crime control initiatives in which United States attorneys participate?

A: United States attorneys, as the chief law enforcement officers in their districts, have always been involved in crime control efforts. They must work closely with federal, state, and local law enforcement investigative agencies to assess and address the crime problem in each of their districts, whether it is youth or gang violence, church burnings, drug trafficking, or another crime problem.

The United States attorneys are



Carol DiBattiste

presently involved in several crime control initiatives. In March 1994, Attorney General Janet Reno and Vice President Gore announced the Anti-Violent Crime Initiative (AVCI). The AVCI calls for U.S. attorneys to forge partnerships with state and local law enforcement and develop strategies to address the problem of violent crime. In May 1996, the Attorney General announced the Youth Crime Initiative, another facet in the AVCI, aimed at preventing, investigating, and prosecuting crime committed by juveniles.

Most recently, in response to the dramatic increase in the number of fires at houses of worship, the Attorney General established a national task force to coordinate the investigations and prosecutions of those responsible for the destruction of these houses of worship. Representatives of the United States attorneys are on this task force. In addition, the Attorney General has asked United States attorneys to form local task forces.

Q: The sentencing guidelines dramatically changed the work of the federal judges. Have the guidelines changed the way in which United States attorneys approach cases?

A: The sentencing guidelines have enabled federal prosecutors to have a clearer picture of how certain conduct will be punished by the court. Before the guidelines became effective in 1987, there was much more uncertainty about what sentence would be imposed. The expected sentence may be one factor among many that United States attorneys consider when deciding which cases to dedicate limited resources to investigating and prosecuting.

The guidelines have created a whole new area of practice for prosecutors. Before the guidelines, prosecutors were much less involved in the sentencing of a defendant, and there were many fewer appeals of sentencing issues. Now, prosecutors must be sure they are using the correct version of the guidelines, which is not always a simple task in view of all the amendments to the guidelines, and they must be cognizant about the retroactivity of guideline amendments. They also must be knowledgeable on the law interpreting the guidelines, and be prepared to spend considerable time in sentencing hearings and on appellate work related to sentencing issues. While it is very important work, it does reduce the amount of time to investigate and prosecute other cases.

Q: What do you expect to be the impact of the new Prisoner Litigation Reform Act?

A: The Prisoner Litigation Reform Act certainly makes it more difficult for prisoners to file multiple frivolous complaints in federal district court. The act requires that the prisoners pursue an administrative claim before a complaint can be filed in district court. Further, prisoners will be responsible for filing fees and subject to sanctions for

See Interview on page 12

Interview continued from page 11
frequent and frivolous claims. These provisions should slow to some extent the amount of prisoner litigation being filed in federal district court. Just how great an impact this will have on filings remains to be seen.

Q: Similarly, what impact do you see the recent habeas corpus amendments having?


A: The habeas corpus amendments will have the greatest impact on challenging state convictions. With regard to federal matters, the amendments serve to prevent prisoner petitions from being filed years after the defendant is convicted. The amendments provide that prisoners must file any petitions challenging convictions or conditions of confinement within one year after all regular appeals are exhausted. While there should be only a modest effect on the number of filings, they will come in a more con-

centrated time frame. Any rise in the number of cases filed within a given year to meet the deadline will be more than offset by the reduction in the total caseload as a result of the one-year time limit.

Q: How have U.S. attorneys coped with continuously rising caseloads and tighter budgets? Have priorities changed? Are civil matters delayed in favor of criminal prosecutions?

A: Just as the courts have done, the U.S. attorneys have had to sharpen their management skills and look for innovative ways to do things. We have also had to focus our priorities. We have continued our longstanding commitments to battle drugs and violent crime most recently through Attorney General Reno's AVCI. We have tried to concentrate our efforts on the more complex problems of going after distribution organizations and violent gangs. Large fraud cases remain of

concern in such areas as telemarketing and health care. But new challenges continually occur, such as the recent church arsons, and we are challenged to enforce interstate efforts to protect spouses from violence. More challenges loom in the future when we look at the demographics of rising serious violence among our juveniles.

We were concerned during last year's appropriation crises that civil be given proper funding to avoid any slowdown, but I do not believe there is any effort to favor criminal work at the expense of our civil efforts. Defense of the public treasury and enforcement of programs and administrative efforts is vital to the country. We have experienced positive growth in our collections area and our affirmative civil enforcement efforts. We are also looking to relieve the burden on the courts through cooperating in developing, such areas as alternate dispute resolution. 

THE THIRD BRANCH

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THE THIRD BRANCH

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104th Congress Takes Recess and Prepares for Home Stretch

Budget

While uncertainty continues to surround the Judiciary's fiscal year 1997 budget, the potential problems are in comparison to the woes of 1996 when the government was shut down because of the budget impasse. With a month remaining between when Congress returns from recess in September and the target adjournment date of October, the possibility exists that the FY 97 appropriation may not reach the President's desk this session. Another possibility is that the President would veto the Judiciary's pending bill, due to issues unrelated

to the courts. Were either of these to occur, Congress is planning to act on a continuing resolution in September to avoid a repeat of last year.

H.R. 3814, the Commerce, Justice, State, and the Judiciary appropriations bill for FY 1997 passed the House on July 24 and the Senate Appropriations Committee passed its version on August 1, 1996. In September, after the congressional recess, the full Senate will consider the bill and then work out the differences between the House and Senate versions in conference. Both

See Budget on page 2

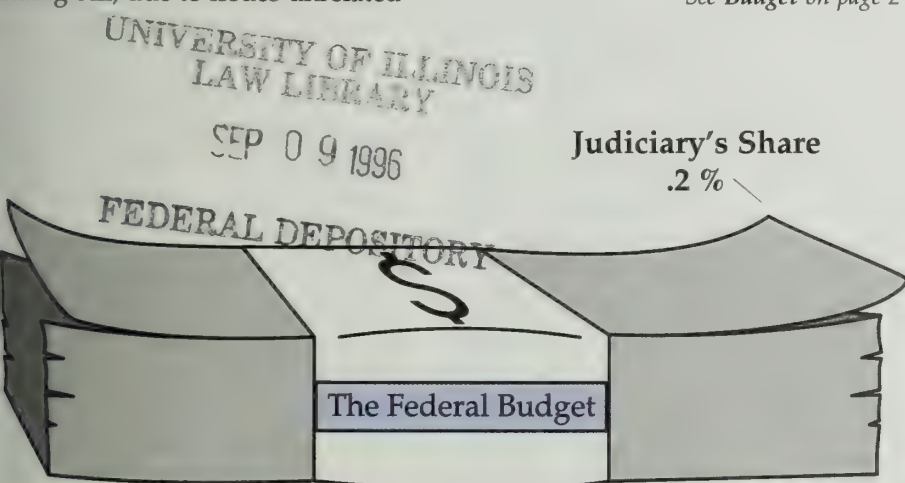
Legislation

The 104th Congress took its final recess on August 2, 1996, and will return in September to face an array of legislation with only about a month to act on it. Topping the Judiciary's agenda is its fiscal year 1997 appropriation and the Federal Courts Improvement Act. Both have been the subject of House and Senate activity and face possible enactment prior to adjournment. Also of interest to the Judiciary is a bankruptcy judgeship bill, and the extension of the parole commission. Other measures—such as juvenile crime bills and public building reform legislation—are included in the long list of legislation the 104th Congress will try to address before its target adjournment in the first week of October.

S. 1887: Federal Courts Improvement Act of 1996

Status: The bill was reported out by the full Senate Judiciary Committee and waits for Senate action after the recess. A companion bill, H.R. 1989, was reported out to the House Judiciary Committee by the Subcommittee on Courts and Intellectual Property. The committee did not act on the bill before the recess.

See Legislation on page 4



INSIDE

FY 97 Pay Adjustment Uncertain for Judges	3
Congress Considers Victim's Rights Amendment	6
Chief Justice Selects New Administrative Assistant	9

Budget continued from page 1
chambers need to approve the conference agreement.

The House version of the bill provides the Judiciary with \$3.22 billion, a 5.6 percent increase over the FY 96 appropriation. The Judiciary appealed to the Senate for an additional \$120 million over the House bill.

In a letter to the Senate Appropriations subcommittee members, Chief Judge Richard S. Arnold (8th Cir.), chair of the Judicial Conference's Committee on the Budget, and Administrative Office Director Leonidas Ralph Mecham wrote, "The Judiciary is aware of the tight fiscal constraints placed on the appropriations committees. We are

looking at and implementing all possible ways to improve the efficiency of the Judiciary, while handling the expanding uncontrol-


res-ponded by providing an additional \$60 million for the Judiciary. The Senate bill provides the Judiciary with \$3.28 billion, a 7.6

"We [in the Judiciary] are looking at and implementing all possible ways to improve the efficiency of the Judiciary, while handling the expanding uncontrollable workload."

lable workload. Further, in the Judiciary's continuing efforts to hold down spending, reductions in the FY 97 request were identified and provided to the committee. In total, the appeal is below even this lower reestimated level." The Senate

percent increase over FY 96

At the Senate level, sufficient funds are provided in the Salaries and Expenses account to fund current services and selected high priority enhancements. The House level should fund current services, and it is likely that the level ultimately agreed to by the House and Senate conferees would be somewhere in the middle. Both the House and Senate fund the Court Security account at the requested level. The Senate funds both Fees of Jurors and the Administrative Office at the requested levels, while the House is more than \$2 million below the request in each account. Both the House and Senate reduced the Defender Services account below the requested level, with the Senate providing \$15 million more than the House. In the Senate bill, the Federal Judicial Center was frozen at the 1996 level, with the House slightly below that. The Crime Trust Fund was funded at the 1996 level in both bills. The Senate bill also includes funds for a study of the structure and alignment of the circuits.

In both the House and Senate bills, the Judiciary fared well compared to most other agencies. Although the Department of Justice received a larger increase than the Judiciary in both bills, the Commerce and State Departments were actually reduced from their FY 96 funding levels. 

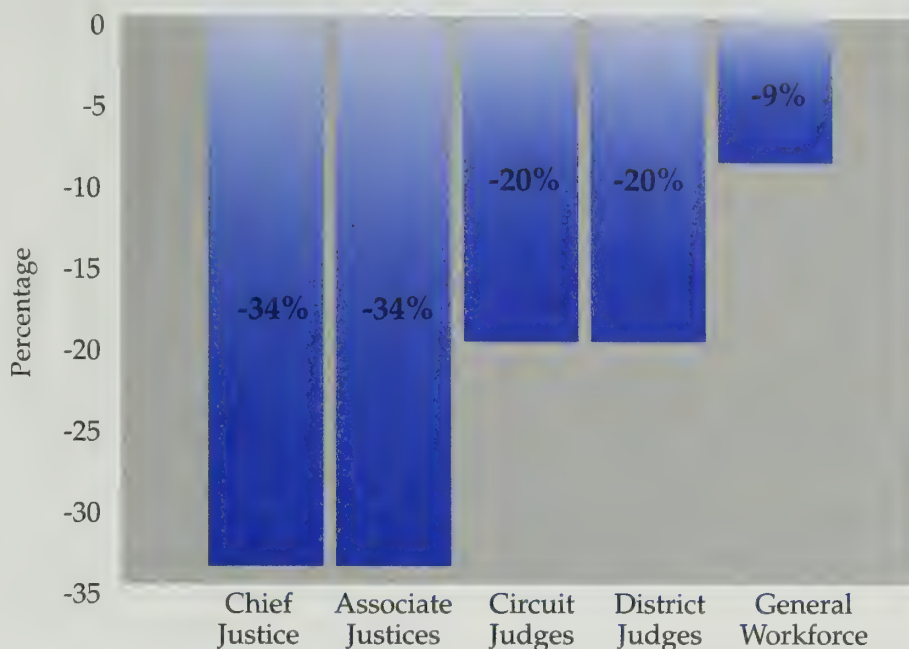
Judiciary Appropriations (In Thousands)

Account	FY 96 Enacted	FY 97 Request	FY 97 House	FY 97 Full Senate Committee
Supreme Court				
Salaries & Expenses	\$25,834	\$27,157	27,157	27,157
Building & Grounds	3,313	3,313	2,490	3,100
Federal Circuit	14,288	15,978	15,013	15,013
Court of International Trade	10,859	11,114	11,114	11,114
Courts of Appeals, District Courts and other Judicial Services:				
Salaries & Expenses	2,433,141	2,666,800	2,538,956	2,578,646
Crime Trust Fund	13,900	24,687	30,000	30,000
Defender Services	267,217	320,939	297,000	311,900
Crime Trust Fund	16,100	20,313	0	0
Fees of Jurors	59,028	69,400	66,000	68,083
Court Security	102,000	131,600	131,000	127,000
Counterterrorism Account	0	0	0	4,000
Administrative Office	47,500	50,922	48,500	50,900
Federal Judicial Center	17,914	19,625	17,495	17,914
Judiciary Trust Funds	32,900	30,200	30,200	30,200
Sentencing Commission	8,500	9,200	8,300	8,867
Total Judiciary	\$3,052,494	\$3,401,248	\$3,223,225	\$3,283,894

Pay Adjustment for Judges Uncertain in FY 97

Federal judges have not received a pay adjustment in three years, and the outlook for fiscal year 1997 is problematic. In the House, an amendment has been attached to the FY 97 Treasury appropriations bill that would exclude members of Congress, senior executive branch officials, and judges from receiving a pay adjustment of approximately 2.3 percent. The Administrative Office and key judges urged the Senate Appropriations Committee to reject the House amendment and to approve a pay increase at least for judges. The committee rejected the House amendment, leaving the pay increase an open issue. It remains to be seen what the Senate will do when it returns from recess. The accompanying graph shows how judges' real pay has been affected by the continued pay freeze.

Percentage of Change in Real Pay from 1969 to 1995



Consensus Decision Closes National Fine Center

As recommended by the international consulting firm of Coopers & Lybrand (C&L) and with the concurrence of four U.S. Senators, Administrative Office Director Leonidas Ralph Mecham has directed that the National Fine Center be terminated and that the function of receipting outstanding criminal debt be returned to the districts. The Judiciary is presently seeking legislation to return \$12 million to the Crime Victims Fund and to discontinue the fine center.

"I have held the view for some time that the fine center is based on flawed legislation and that a centralized effort simply cannot work," Mecham said, "a view at least partially shared by the Judicial Conference which opposed placing

this executive branch function within the Judiciary. With the support of Congress and a highly reputable consulting firm, we now can close the center and resume efforts to assist the Department of Justice (DOJ) with its statutory responsibility to collect criminal fines."

Despite the difficulties, the AO reported that the Judiciary successfully receipted \$1.2 billion in fines during the period from 1991 to 1996, nearly five times more than collected by the Justice Department, and constituting roughly 82 percent of the funds available to the victims. A portion of this money has not reached the victims due to the processes in place at DOJ, the States, and grant organizations, including a

\$50 million reserve maintained by the DOJ.

The C&L report found that the center was created by "overlapping and confusing" legislation. Among the problems encountered were the complexities associated with criminal debt and the cultural and environmental differences underlying the independent philosophies of the Judiciary and the DOJ. The report further noted that the majority of criminal debts are managed by a relatively few large districts and a national approach will not be an effective solution to what is a localized series of district business processes. As the C&L report concluded, "[I]t is well documented that the needs of the districts—those

See *Fine Center* on page 6

Legislation continued from page 1

Several amendments were added to this legislation (see *The Third Branch*, July 1996) by the Senate Judiciary Committee. One amendment would require judicial officers to demonstrate proficiency in the use of firearms as a prerequisite to carrying a firearm.

A bill, S. 1115, was added in the form of an amendment, which would prohibit an award of costs in cases brought against a judicial officer for action taken in a judicial capacity. This provision is supported by the Judicial Conference.

The Senate bill also includes an increase from \$50,000 to \$75,000 in the jurisdictional amount in controversy in diversity cases; and authority for magistrate judges to decide petty offense cases without consent of the accused. These provisions and the firearms amendment are not in the House version, which includes a provision allowing district courts to require litigants in pending civil cases to participate in a non-binding court-annexed arbitration program. The Judicial Conference has taken a position against this latter provision.

The most significant amendment—at least in terms of its effect on the overall legislation—was the addition of S. 374, the Sunshine in Litigation Act of 1995 in the Senate Judiciary committee markup. The amendment would amend Rule 26(c) of the Federal Rules of Civil Procedure, limiting the use of protective orders and the sealing of cases in civil actions. The amendment is controversial and may jeopardize passage of S. 1887.

**S. 1507: Parole Commission
Phaseout Act of 1995**

Status: Due to extended debate on youth violence legislation, the House Judiciary Committee did not consider S. 1507. The bill will not be reported by the committee until September.

The bill proposes a 5-year extension of the Parole Commission

to November 1, 2002, as well as a gradual reduction in the size and budget of the commission. (see *The Third Branch*, July 1996).

**S. 1952: Juvenile Justice and
Delinquency Prevention Act of 1996**

Status: On August 1, the bill was reported favorably by the Senate Judiciary committee.

The bill essentially provides funds to the states to “beef up” their juvenile justice programs, targeting youth violence at the state level. The bill was reported without amendment. However, on the Senate floor, a number of amendments could be added that are designed to increase federal prosecution of juveniles, such as provisions related to prosecution of criminal gangs.

The House is considering H.R. 3565, the Violent Youth Predator Act of 1996, which would dramatically expand federal prosecution of juveniles. The markup will not be concluded until September.

**H.R. 3586: Veterans Employment
Opportunities Act of 1996**

Status: The bill was passed by the House and now goes to the Senate for consideration after the recess.

The bill would extend veterans preference to appointments and reductions in force to the Judiciary. Judicial officers—a justice, judge or magistrate judge—are excepted, as are law clerks, or a secretary to a justice or judge, or an appointment to a position the duties of which are equivalent to those of a Senior Executive Service position. In addition, the bill would require the Judicial Conference to prescribe redress procedures for alleged violations of the rights.

**H.R. 2604: Bankruptcy
Judgeship Act of 1995**

Status: Reported out by the House Judiciary Committee, the bill is now awaiting floor action. Questions have

been raised in the House and Senate concerning the allocation of bankruptcy judgeship resources.

The bill would add four permanent bankruptcy judgeships in the Central District of California and one in the District of Maryland. It would add one additional temporary judgeship to the Southern District of Florida, the Eastern District of Michigan, the District of New Jersey, the Eastern District of New York, the Northern District of New York, and the Eastern District of Pennsylvania.


**H.R. 3953: Aviation Security and
Antiterrorism Act of 1996**

Status: Legislation was drafted in hopes of passing a package before the August recess, but only the House approved the bill before recessing. It is unclear if the Senate will consider the bill when it returns in September.

The House passed a stripped-down antiterrorism bill. The bill would tighten airport security, allow prosecution of terrorists under the RICO statutes, and encourage the Department of Justice to implement death penalty provisions against terrorists. The bill does not include expanded wiretapping authority or provisions requiring chemical markers in explosives.

**S. 1005: Public Building Reform
Act of 1996**

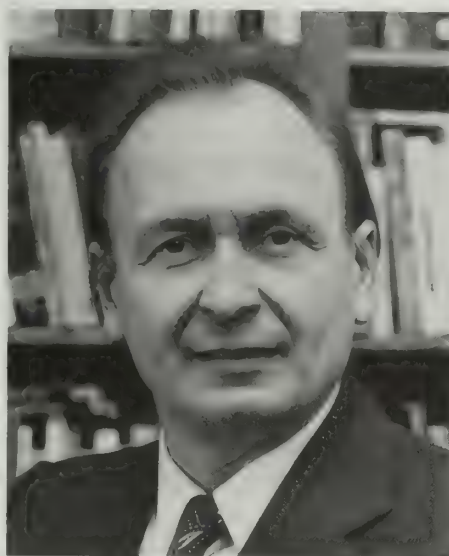
Status: The Senate passed the bill, and it was referred to the House. It is awaiting possible action after the recess.

The bill requires the General Services Administration to prioritize public building projects in 3-year periods and develop design guidelines and standards for federal courts. (see *The Third Branch*, June 1996) 

Judicial Fellows Chosen for 1996-97

The Judicial Fellows for 1996-97 are Sirkka A. Kauffman, Harry L. Pohlman, Mark Syska, and Elizabeth C. Woodcock. They join a program whose alumni include present-day leaders in academics, government, and law.

"The Judicial Fellows Program offers a unique opportunity for exceptional individuals to apply their talents and interest to the administration of justice," wrote Chief Justice William H. Rehnquist. Founded by Chief Justice Warren E. Burger in 1973, the program gives fellows the opportunity to study the



Harry L. Pohlman

federal judicial process. Successful candidates have at least one post-graduate degree, two or more years of professional experience, a record of high performance, and multidisciplinary training and experience, including familiarity with the judicial process.

Mark Syska, a staff attorney for the Seventh Circuit Court of Appeals, will serve as the Judicial Fellow for the Administrative Office. Syska was a law clerk for Judge James Holderman (N.D. Ill.) from 1992-1994. From 1990 to 1992,



Mark Syska

administrative machinery of the federal judiciary, as well as gain a perspective on the dynamics of interbranch relations. During their year-long appointment, Fellows are assigned to the Supreme Court, the Administrative Office, the Federal Judicial Center, or the U.S. Sentencing Commission.

Fellows are selected by the 13-member Judicial Fellows Commission on the basis of the long-term career benefits they might receive from the experience and on their interest in improving the workings of the public understanding of the



Elizabeth C. Woodcock

he was an instructor at Northwestern University School of Law and the University of Illinois College of Law. From 1987 to 1990, Syska was an attorney at Sidley & Austin in Chicago. He received his law degree from the University of Illinois College of Law in 1987, where he ranked first in his class and was Law Review Line Editor.

Harry L. Pohlman, a professor of political science at Dickinson College, will be the Judicial Fellow at the U.S. Supreme Court. Pohlman has published six books on law and constitutional theory in the past 12



Sirkka A. Kauffman

years, including two studies of Oliver Wendell Holmes. His most recent publication is a 3-volume set, "Constitutional Debate in Action." He is the recipient of numerous honors and grants, including a 1989 Henry M. Phillips Research Grant in Jurisprudence from the American Philosophical Society. He earned a Ph. D. in political science from Columbia University in 1982.

Elizabeth C. Woodcock, an assistant U.S. attorney in Bangor, Maine, since 1991, will be the Judicial Fellow at the U.S. Sentencing

See Fellows on page 7

Congress Considers Victim's Rights Constitutional Amendment

The House and Senate are considering a proposed amendment to the Constitution protecting the rights of crime victims. The Senate Judiciary Committee has held hearings on S.J. Res. 52, introduced by Senators Jon Kyl (R-AZ) and Dianne Feinstein (D-CA). The House Judiciary Committee has likewise held hearings on the House's companion resolutions, H.J. Res. 173 and H.J. Res. 174, introduced by Representative Henry J. Hyde (R-IL). Thus far in the 104th Congress, nearly 200 amendments to the Constitution have been proposed, but in its 207-year history, the Constitution has been amended only 27 times. However, the victims' rights resolutions enjoy bipartisan support in Congress, and the concept has been endorsed by the White House.

The House and Senate resolutions are quite similar. S.J. Res. 52 provides that "to ensure that the victim is treated with fairness, dignity, and respect from the occurrence of a crime of violence and other crimes as may be defined by law pursuant to section 2 of this article, and throughout the criminal, military, and juvenile justice processes, as a matter of fundamental rights to liberty, justice, and due process, the victim shall have the following rights: to be informed of and given the opportunity to be present at every proceeding in which those rights are extended to the accused or convicted offender; to be heard at any proceeding involving sentencing, including the right to object to a previously negotiated plea, or a release from custody; to be informed of any release or escape; and to a speedy trial, a final conclusion free from unreasonable delay, full restitution from the convicted offender, reasonable measures to protect the victim from

violence or intimidation by the accused or convicted offender, and notice of the victim's rights." H.J. Res. 173 differs slightly from the other two proposals, making these rights available to victims upon request to the prosecuting authority.

Section 2 of this resolution gives states and Congress, within their respective forums, the power to implement further this article by appropriate legislation.

The Judicial Conference has taken no position on the resolutions. However, the views of the Criminal Law Committee were solicited by Senator Joseph R. Biden, Jr. (D-DE), ranking minority member of the Senate Judiciary Committee. In her response, Judge Maryanne Trump Barry (D. N.J.), chair of the Criminal Law Committee, urged Congress to "carefully review" the proposed amendment, since it would represent a significant change in the criminal justice system. Barry noted that as written the resolutions raise

fundamental questions of interpretation. Among the issues raised by Barry were the resolution's failure to provide a definition for "victim;" whether the victim's right to object to a previously negotiated plea is binding on the court; and whether the mandatory restitution clause of the amendment supersedes the mandatory restitution requirements of the recently enacted Antiterrorism and Effective Death Penalty Act of 1996. In addition, the amendment leaves other questions unanswered. How can courts enforce the victim's right to a speedy trial? What relief does the victim receive if the trial is not speedy? Does a victim's right to a final conclusion "free from unreasonable delay" conflict with a defendant's right to file a motion or a habeas corpus petition? As Barry cautioned, "Such sweeping changes in our criminal justice system should not be accorded anything less than thorough, exhaustive deliberation."

Fine Center continued from page 3
people directly managing and collecting the debts—cannot be met through a national database approach."

In late June, Senators Orrin Hatch (R-UT), John McCain (R-AZ), Joseph R. Biden Jr. (D-DE), and Byron Dorgan (D-ND) sent Mechem a letter in which they concurred with the report's recommendation that the fine center be terminated, based on the finding that a centralized national debt tracking system is unworkable at this time. As far back as 1985, the Judicial Conference determined that, as a matter of policy, it is inappropriate for the Judiciary to collect criminal fines, except in

limited circumstances. At that time, the Conference also voted to oppose any changes in the law that would transfer this responsibility to the courts in general.

The AO is working with members of Congress, the DOJ, and crime victims stakeholders in focusing on the C&L recommendations for the optimum district-level approach. The AO also is working with all parties affected by the impending shutdown of the fine center, including district clerks' offices, probation offices, and U.S. attorneys' offices, in order to minimize the disruptions and difficulties associated with the center's closure.

AUGUST

19-22 Monday-Thursday
Ninth Circuit Conference

28-30 Wednesday-Friday
Workshop for Judges of the Sixth and Eighth Circuits

28-30 Wednesday-Friday
Workshop for Magistrate Judges of the 5th, 8th, 11th,
and D.C. Circuits

SEPTEMBER

17-18 Tuesday- Wednesday
Judicial Conference of the United States

25-27 Wednesday-Friday
Workshop for Judges of the Eleventh Circuit

BANKRUPTCY JUDGESHIPS, Southern District of Indiana and Northern District of Illinois

Applicants are being sought for bankruptcy judge positions in the Southern District of Indiana and the Northern District of Illinois. The Southern District of Indiana judge will be headquartered in Indianapolis and travel to other locations in the district as well as spend about 20 percent of his or her time working in the Southern District of Illinois at the East St. Louis Courthouse. The Northern Illinois judge will be headquartered in Chicago and will spend about 20 percent of his or her time working on Eastern Wisconsin bankruptcy cases in Milwaukee and elsewhere. Applicants should be admitted to practice in at least one state court and be members in good standing of every bar in which they are members. The term of office is 14 years and the current salary is \$122,912. Interested applicants may obtain an application from any bankruptcy court clerk in the circuit or from the clerk of the United States Court of Appeals for the Seventh Circuit. Persons interested in applying for these positions should send their applications to Collins T. Fitzpatrick, Circuit Executive, Judicial Council of the Seventh Circuit, 2780 U.S. Courthouse, 219 South Dearborn St., Chicago, Illinois 60604. Applications are to be received by **September 16, 1996**.

CIRCUIT MEDIATORS, Eleventh Circuit

Applications are being sought for two circuit mediator positions: one is located at the court's headquarters in Atlanta, Georgia, and the other in Tampa, Florida. Incumbents will preside at mediation conferences in selected civil appeals. The primary purpose of these conferences is to settle cases and eliminate them from the court's docket. Duties include leading discussions of the procedural and substantive legal issues involved, conducting economic analyses of a case's settlement value, and encouraging settlement by creating and exploring options to continued litigations. To qualify, an applicant must have mediation training and experience. Starting salary: \$72,000-\$85,000 (CL 31), depending on experience. For full requirements and application procedures, contact Cheryl Vessels, personnel specialist, at (404) 331-3847. The application deadline for the Atlanta position is **September 30, 1996**, or until filled. The court expects to fill the Tampa position at a later time, probably November 1996.

EQUAL OPPORTUNITY EMPLOYERS

Judicial Conference Committee Chairs Selected by Chief Justice



Judge David Thompson

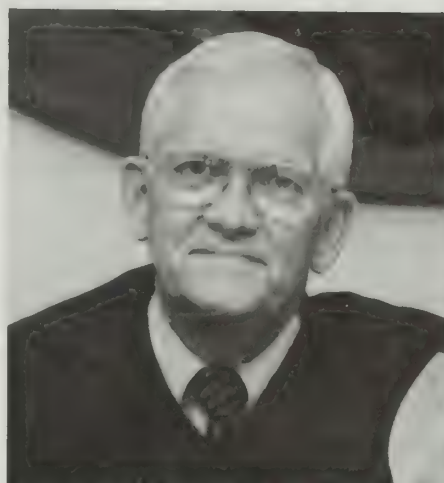


Judge George P. Kazen

Chief Justice William H. Rehnquist has appointed four new Judicial Conference committee chairs. Their tenure begins on October 1, 1996. Eight committee chairs have been reappointed for terms of one or two years. Judge David Thompson (9th Cir.) will succeed Chief Judge Paul A. Magnuson (D. Minn.) as chair of the Committee on the Administration of the Bankruptcy System. Judge George P. Kazen (S.D. Tex.) will succeed Judge Maryanne Trump Barry (D. N.J.) as chair of the Committee on Criminal Law. Judge Adrian G. Duplantier (E.D. La.) will succeed Chief Bankruptcy Judge Paul M. Mannes (D. Md.) as chair of the

Advisory Committee on Bankruptcy Rules. Judge Paul Niemeyer (4th Cir.) will succeed Judge Patrick E. Higginbotham (5th Cir.) as chair of the Advisory Committee on Civil Rules. The new chairs are pictured.

Judge Ann Williams (N.D. Ill.) will continue to chair the Committee on Court Administration and Case Management for another year. Judge James Logan (10th Circuit), chair of the Advisory Committee on Appellate Rules and Judge Lowell Jensen (N. D. Calif.), chair of the Advisory Committee on Criminal Rules, will also have their terms extended for one more year. Judge Frank Magill (8th Cir.), chair of the Committee on Financial Disclosure, Judge Stanley Harris (D. D.C.), chair of the Committee on Intercircuit Assignments, Judge Philip Pro (D. Nev.), chair of the Committee on the Administration of the Magistrate Judges System, and Judge Alicemarie Stotler (C.D. Calif.), chair of the Committee on Rules of Practice and Procedure, had their terms extended for an additional two years.




Judge Adrian G. Duplantier



Judge Paul Niemeyer

Fellows continued from page 5
Commission. She was previously legislative assistant to Senator William S. Cohen (R-ME). From 1988 to 1989, she clerked for Associate Justices David Roberts and Samuel Collins, Jr. of the Supreme Judicial Court of Maine. Woodcock earned her law degree from the University of Maine School of Law in 1988. Prior to law school, she was an associate dean of admissions at Bates College.

Sirkka A. Kauffman, a Ph. D. candidate in Higher Education from the University of Michigan,

will be the Judicial Fellow at the Federal Judicial Center. Before beginning her doctoral studies, Kauffman served as the associate director of admissions at Vermont Law School from 1988 until 1992. While completing a master's degree in public administration at New York University, she was a project and appropriations administrator from 1983 to 1985 at the New York State Urban Development Corporation, and from 1985 to 1988, a systems planner and senior policy analyst at the Port Authority of New York and New Jersey. 

Chapas Heads AO Court Security Office

Dennis P. Chapas, formerly Deputy to the Marshal for Security at the Supreme Court of the United States, has been named the new Chief of the Administrative Office's Court Security Office. He succeeds Donald Tucker, who retired.

As chief of the Court Security Office, Chapas will coordinate policies and priorities for the judicial facility security program operated by the U.S. Marshals Service as established by AO Director Leonidas Ralph Mecham and by the Judicial Conference on recommendations by its Committee on Security, Space and Facilities. Chapas will also facilitate communication on security matters, among other duties.

During his eight and one-half years at the Court, Chapas oversaw the court's police and initiated a number of security programs to safeguard both the personal security of the Justices and building security.



Dennis P. Chapas

He joined the court staff in 1988 after 20 years with the United States Secret Service. In his career with the Service, he served on both Vice-presidential and Presidential protective details, conducted criminal investigations, and worked on Capital Hill as part of the Secret Service's Liaison Division.

THE THIRD BRANCH

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For the Record . . .

"[W]e must maintain and improve the quality of our judges. As I have already suggested, the screening of judicial candidates by those most familiar with the character of their reputations is an indispensable part of the selection process. . . Persons who undertake the task of administering justice impartially should not be required—indeed, they should not be permitted—to finance campaigns or to curry the favor of voters by making predictions or promises about how they will decide cases before they have heard any evidence or argument."

—*Supreme Court Justice John Paul Stevens at the American Bar Association Annual Meeting earlier this month.*

JUDICIAL BOXSCORE

As of August 1, 1996

Courts of Appeals
Vacancies
Nominees

District Courts
Vacancies
Nominees

Court of International Trade
Vacancies
Nominees

Courts with
"Judicial Emergencies"

New Administrative Assistant Begins Duties at Supreme Court

James C. Duff, a partner in the Washington law firm of Howrey & Simon, has been selected by the Chief Justice as his new administrative assistant. Duff begins his assignment with the Chief Justice on August 19, 1996. He replaces Harvey Rishikof, who is completing his two-year appointment to the post.

Duff, 43, has been a partner with Howrey & Simon since 1991, specializing in commercial litigation, including antitrust, intellectual property, and international trade matters, as well as practicing legislative law at both the federal and state levels. Prior to becoming a partner at Howrey & Simon, he was a partner at Clifford & Warnke from 1990 to 1991 and was an associate there from 1982 to 1990. Duff's new position marks a homecoming for him; he worked as the assistant



James C. Duff

coordinator of conference in the chambers of Chief Justice Warren E. Burger from 1975 to 1979.

Duff received a bachelor's degree in political science and philosophy from the University of Kentucky in 1975, graduating Phi Beta Kappa

and magna cum laude in the honors program. In 1974, he attended the University of Edinburgh in Scotland. Duff received his law degree from Georgetown University Law Center in 1981.

The administrative assistant aids the Chief Justice in his overall management of the Supreme Court, provides research in support of the Chief Justice's public addresses and statements, and monitors developments in the field of judicial administration and court reform. He also assists the Chief Justice with his other statutory responsibilities as head of the Third Branch of government. The Chief Justice is also chairman of the board of the Federal Judicial Center, presiding officer of the Judicial Conference, and chancellor of the Smithsonian Institution.

JUDICIAL MILESTONES

Appointed: Henry B. Pitman, as U.S. Magistrate Judge, U.S. District Court for the Southern District of New York, July 8.

Elevated: Bankruptcy Judge Tina L. Brozman, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of New York, succeeding Chief Bankruptcy Judge Burton R. Lifland, March 28.

Elevated: Bankruptcy Judge John TeSelle, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Oklahoma, succeeding Chief Bankruptcy Judge Paul B. Lindsey, June 22.

Senior Status: Judge James Hughes

Hancock, U.S. District Court for the Northern District of Alabama, May 1.

Senior Status: Judge Edwin Kosik, U.S. District Court for the Middle District of Pennsylvania, July 15.

Senior Status: Judge Thomas N. O'Neill Jr., U.S. District Court for the Eastern District of Pennsylvania, July 6.

Senior Status: Judge Robert B. Propst, U.S. District Court for the Northern District of Alabama, July 15.

Retired: Senior Judge Robert P. Aguilar, U.S. District Court of the

Northern District of California, June 24.

Retired: Judge H. Lee Sarokin, U.S. Court of Appeals for the Third Circuit, July 31.

Deceased: Judge T.F. Gilroy Daly, U.S. District Court for the District of Connecticut, July 11.

Deceased: Senior Judge Helen Nies, U.S. Court of Appeals for the Federal Circuit, August 7.

Deceased: Senior Judge Elbert Parr Tuttle, U.S. Court of Appeals for the Eleventh Circuit, June 23.

Chief Judge Julia S. Gibbons Focuses on Judicial Resources

Chief Judge Julia S. Gibbons was appointed to the Western District of Tennessee in 1983. She is presently the chair of the Judicial Conference's Committee on Judicial Resources, which considers issues of human resource administration in the Judiciary.

Q: You've chaired the Judicial Resources Committee for nearly two years now and have served as a committee member since 1990. What do you see as the committee's mission?

A: We're responsible for ensuring that the judiciary has adequate personnel resources—from Article III judges to deputy clerks. That involves more than identifying personnel resource needs, though. In recent years, the committee has focused on identifying ways to make the most efficient use of those personnel resources we have.

Q: What are the committee's initiatives and accomplishments in this area?

A: The accomplishment which came to fruition over a period of years is the reform of the Judiciary's pay system for support staff. This effort has spanned the tenures of three committee chairs: it began under the chairmanship of Senior Judge Walter McGovern (W.D. Wash), continued under Chief Judge Carolyn Dimmick (W.D. Wash.), and was implemented during my chairmanship. It began about the time that the Judicial Conference's Budget Committee started to decentralize budget control to the level of the local

courts. Back then, the Judicial Resources Committee and the Judicial Conference were directly involved in determining the grade and pay levels of the various types of support positions. Now, six years later, thanks to the joint efforts of our committee, the Budget Committee, courts around the country, and

attempting to be responsive to Congressional and Judicial Conference concerns about maintaining a relatively small number of Article III judgeships, while at the same time providing the resources necessary for prompt attention to the caseload. This represents a major challenge in the face of new legis-

"By definition, the search for 'better practices' is ongoing. We can't assume that those practices which have been identified to date are the best, and it's great that court employees continue to search for improvements."

staff at the Administrative Office, we have successfully implemented the Court Personnel System, also known as CPS. Along with its budget component, this system has moved us in a relatively short period of time from a highly centralized personnel system to a highly decentralized system, without sacrificing the system's integrity. This system equips courts with the flexibilities needed to cope with the budget constraints we're experiencing.

Q: Pay levels certainly affect budgets, but we also hear a great deal about judgeship issues. What is the committee doing in this area?

A: Our responsibilities here cover the numbers of Article III judgeships and support staff. The Judiciary plays an advisory role to the Congress in matters related to the number of judgeships, and that job has become more demanding in recent years. The committee is

attempting to be responsive to Congressional and Judicial Conference concerns about maintaining a relatively small number of Article III judgeships, while at the same time providing the resources necessary for prompt attention to the caseload. This represents a major challenge in the face of new legislation and social changes that have a tendency to increase the workload of the courts. The committee is addressing the issue by considering alternatives to the past practice of recommending primarily additional permanent judgeships in response to the increasing caseload. Among the options being reviewed are (1) greater reliance on temporary rather than permanent judgeships; (2) a review of the continuing need for additional judgeships rather than just a review of the need for additional judgeships; and (3) alternatives that would give the Judiciary more flexibility in the placement of judgeship positions. The committee has just begun to explore some of these options, so it is far too early to speculate on their potential.

Q: Aren't the challenges the same for support staff requirements?

A: They are certainly as great but the challenge here is to find ways to cope with the reduced

staffing levels dictated by the budget environment. The committee is addressing this challenge by lending full and active support to a long-term project designed to assist the courts in identifying "better practices." The project, known formally as the Judiciary Methods Analysis Program, provides a forum for work groups of court support staff to share ideas, identify effective practices from around the system, and explore innovative approaches to day-to-day tasks. The work groups share the results of their work with all similar court units, and provide assistance to courts interested in implementing one or more of the "better practices" identified through the process. In this way, all courts can benefit from the project and hopefully manage more effectively with the reduced staffing levels.

Q: Has this effort improved our ability to get adequate resources from Congress?

A: The Methods Analysis Program provides evidence to Congress that the Judiciary is willing to take the initiative in economizing, and this strengthens the position of the Budget Committee in obtaining funding from Congress. We in the Judiciary have reason to be proud of our many efforts in this area. We have dedicated, service-oriented personnel at all levels in our branch. I'm proud, as chair of the Judicial Resources Committee, to play a part in nationwide systems that help to unleash the economizing potential of all judiciary employees. Having these systems in place allows us to draw congressional—and public—attention to the cost-efficiency of our operations.

Q: Your committee also has primary responsibility for

developing the Judiciary's report in response to the Congressional Accountability Act of 1995. What is that act about?

A: As its first piece of legislation, the 104th Congress provided legislative employees with certain workplace rights and protections that have long been



Judge Julia S. Gibbons

in place in the private sector and in most of the public sector, through the Congressional Accountability Act of 1995.

Implementation in the legislative branch is still underway. The act also calls for the Judiciary to report on how comparable protections might be provided for judicial branch employees. That report is due December 31, 1996. Our committee will be recommending a report for Judicial Conference action at its September meeting.

Q: What forces led Congress to pass this legislation?

A: Congress felt a need to cover its own employees in much the same way that it has covered the rest of the country's workforce. Many Members did this

despite their belief that the procedures for implementing those protections that are in place for the general workforce are burdensome and costly. Their hope was that Congress, after experiencing this burden and cost, would be moved to revise the laws. To date, however, there hasn't been much evidence of this outcome occurring.

Q: Wouldn't the Judiciary experience the same kind of budgetary difficulties were we to be covered?

A: Our analysis shows that we would, and given the financial constraints we are currently operating under, we fear that coverage could erode our ability to serve the public. Based on that analysis, we are considering an approach that would provide the substantive protections of these workplace laws in an efficient manner.

Q: Do you believe that can be done?

A: Yes, we do. We believe that in large part because we feel that the Judiciary has long been able to provide these protections as a matter of policy, and that we have already absorbed the expense of providing these protections. In addition, though, we are unique among employers in having the internal resources to allow employees to bring their concerns before federal judges. All other workers in this country must pursue a much more complicated and expensive process of seeking review of their complaints by a federal regulatory agency and entering the federal litigation process. We see no real value added for employees of the federal Judiciary by forcing that same process on them, when it can

See Interview on page 12

Interview continued from page 12
be made available in its substantial elements through a process of administrative review. Nor do we see the taxpayers' interests served by imposing that requirement.


Q: What new challenges do you see coming before your committee?

A: I certainly see the current challenges continuing, for one thing. We've made good starts in many areas, but the programs we have in place are not definitive for all time. Many of them are designed for the long term and will require monitoring by the committee, with wide court involvement. The Methods Analysis Program is an excellent example. By definition, the

search for "better practices" is ongoing. We can't assume that those practices which have been identified to date are the best, and it's great that court employees continue to search for improvements. There's a healthy competition among courts to do things even better and at the same time a constructive sharing of innovative ideas.

Q: You're the chief judge of your court. Does this play any special role in contributing toward your duties as chair of the committee?

A: It certainly helps, since our committee's actions deal with the administrative business of the courts, and much of my time as chief judge is spent in those same

areas. But I think that the diverse makeup of our committee, with judges from each circuit, contributes as well. We each bring to the committee's decisions the benefit of an intimate knowledge of the workings of a particular federal court. This insight brings an element to the Judiciary's policy-making process that is not always present in the policy-making process in other public and private sector organizations. The policy-making officials in the Judiciary are also on the organization's front lines. That is true throughout the conference structure, of course, and I think it plays a very large part in the branch's ability to make policies that work. 

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Videoconferencing Links Courts Across U.S.



Jeff Forte, of the AO's Office of Information Technology, demonstrates the use of desktop videoconferencing equipment that can bring time- and cost-savings to the courts.

Someday, a magistrate judge may conduct prisoner civil rights pretrial hearings at multiple prisons in a single day, without leaving his courtroom. A bankruptcy judge may hold a preliminary hearing in one city while attorneys, witnesses, and other participants gather in a city 100 miles away. And, court personnel sitting on the West Coast may attend a budget seminar with panel members sitting in Washington, D.C. These aren't futuristic sce-

narios. Videoconferencing makes such time- and money-saving ventures possible today in federal courthouses across the country. And to aid in developing future videoconferencing programs, the Executive Committee of the Judicial Conference has earmarked the necessary funds to equip multiple court sites with satellite downlink equipment for educational and administrative video broadcasts.

See Video on page 4

Bankruptcy Filings Pass 1 Million Mark

For the first time in the history of the United States courts, the number of bankruptcy petitions filed has topped the 1 million mark, according to data released last month by the Administrative Office. For the 12-month period ending June 30, 1996, there were 1,042,110 bankruptcy petitions filed. This figure is more than double the number registered a decade ago when, for the 12-month period ending June 30, 1986, there were 477,856 bankruptcy petitions filed. In addition, the number of bankruptcies filed during the third quarter of fiscal year 1996 (April 1-June 30)—297,162—represents the highest quarterly level ever.

Among the U.S. bankruptcy courts, the Central District of California remained the district reporting the largest number of filings in the country with 91,476. The Northern District of Illinois, the District of New Jersey, and the Middle District of Florida all showed over 30,000 bankruptcy filings in this period. Filings in the Northern District of Georgia, and the Eastern and Northern Districts of California neared that mark.

The Judiciary is urging the

See Bankruptcy on page 12

INSIDE

AO Workload Grows While Budget Lags Behind
Technology Increases Public Access to Courts
Judicial Conference Committee Chairs Named

3
6
9

American Bar Association Examines Judicial Independence

Initiatives by the American Bar Association (ABA), announced at its recent annual meeting examine judicial independence and the perception of the third branch of government by the American public.

A Lou Harris and Associates telephone survey conducted in July shows public support for judicial independence against political pressure. The results of the survey were released by the ABA at its annual meeting.

When asked by pollsters if they thought it is appropriate that the decisions of federal judges should be used in political campaigns, 83 percent of those surveyed said it was not appropriate. In response to the question, "Do you think it is reason-

able for either Presidents or members of Congress to try to influence or affect a judge's decision during a case, 84 percent said it was not reasonable. The Harris poll surveyed 1,005 adult Americans.

In questions asked to determine the relative importance of various factors as criteria for judicial selection, the overwhelming majority, 83 percent, said professional competence and reputation were very important in the selection. Only 13 percent said such competence was only somewhat important.

According to half of those interviewed, personal beliefs and ideology were very important in someone selected to be a federal judge. Thirty-five percent responded that those

factors were somewhat important. Fourteen percent thought beliefs and ideology were either not very important or not important at all.

And finally, survey respondents were split on the importance of political party affiliation in the selection of federal judges, with 40 percent saying party affiliation is very or somewhat important, and 58 percent feeling it to be not very important or not important at all. (Two percent didn't know.)

At its annual meeting, the ABA also announced the creation of a Commission on Separation of Powers and Judicial Independence to analyze the constitutional and historical origins and development of judicial independence and the separation of powers doctrine. The 11-member commission includes its chair, Edward W. Madeira, Jr.; former congressman, Robert W. Kastenmeier; former federal judge and White House counsel, Abner Mikva; and several former state and local officials, attorneys and prosecutors. The commission, following a series of hearings, is slated to produce a report by August 1997.

According to the ABA, the commission will "identify and analyze the essential principles of judicial independence, and assess whether incidents such as this spring's public attacks on federal judges for specific decisions and recent congressional activities involving oversight and regulation of the affairs of the federal Judiciary threaten judicial independence." Commission members also will evaluate whether existing mechanisms are adequate to the task of preserving an appropriate balance between judicial independence and accountability. If not, the commission may recommend additional measures or guidelines to restore that balance.

Long-range Planning Process to Continue

Following a meeting and discussion with the Judicial Conference's Executive Committee, the Chief Justice has directed Conference committees to treat long-range planning as "an intrinsic part of each Conference committee's policy-making function." Any additions or changes to the *Long Range Plan for the Federal Courts*, approved by the Conference last fall, will now be handled through recommendations to the Conference from the appropriate committees. Issues of major importance that cut across committee jurisdictions may be addressed by ad hoc committees, appointed by the Chief Justice.

The Conference's Executive Committee will be responsible for coordinating planning activities, and will be aided in that task by special liaison members appointed by the chairs from committees with long-range planning jurisdictions. These members are tasked with promoting and

continuing long-range planning within their committees, and they may also serve as an ad hoc advisory group to the Conference. Committees also are encouraged to include a discussion of long-range planning activities in their regular reports to the Conference.

The Conference's Committee on Long Range Planning completed its work in the fall of 1995 and was recognized for its efforts by the Chief Justice last March. Although there are no plans for another long-range planning committee in the immediate future, it is anticipated that a new committee may be appointed whenever a more thorough update is needed, perhaps every five to ten years. The Administrative Office's Long Range Planning Office will provide professional support to the Executive and other conference Committees and serve as a planning resource to the judicial branch.

Growth of AO Budget Lags Behind that of Judiciary

The cautiously optimistic outlook for the Judiciary's fiscal year 1997 appropriation reflects a continuing commitment on the part of Congress to fund criminal justice programs. It appears that the FY 97 budget may also provide some welcome relief for the Administrative Office, whose budget and staffing increases have not kept pace with the Judiciary as a whole. The AO's budget has been frozen for three out of the last four years, and this has meant that the amounts appropriated for the AO were insufficient to cover the rate of inflation in costs. As a proportion of the total Judiciary budget, the AO's share had decreased from 2.6 percent in 1981 to 2 percent by 1991, and by 1996, its share dropped to 1.6 percent.

Consistent with growth in law enforcement and criminal justice areas generally, the federal Judiciary's budget grew 50 percent over the past five years. However, over this same period, the AO's direct appropriation rose only 20 percent. The number of positions in the Judiciary increased 10 percent since 1991; the AO's directly authorized positions increased only 3 percent.

Over the past few years, Congress has authorized positions for the AO funded on a reimbursable basis from other Judiciary line item appropriations accounts so that critical programs and services could be provided in, for example, court automation support and court security. The reimbursable funding helped the AO's overall funding grow by 11 percent to 31 percent, still substantially below the 50 percent increase for the Judiciary overall. With the reimbursable positions, the number of AO authorized staff rose 8 percent. However, due to strict staffing control policies, including a hiring freeze and a reduction plan for automation positions,

the reality is that the actual number of on-board staff has grown only 4 percent since 1991.

The AO's appropriation, which is 1.6 percent of the total Judiciary budget, is very small compared to other government supported entities. Comparative figures for the Department of Justice show that the funding for administrative support activities in its management and administration accounts represents a much higher percentage of total funding. For example, the management and administration account for U.S. attorneys is 4.1 percent of its total appropriation; for the Federal Bureau of Investigation, 4.7 percent; for the Immigration and Naturalization Service, 7.6 percent; for the Bureau of Prisons, 4.8 percent; and for the Drug Enforcement Administration, 9 percent of the total DEA budget.

The AO provides support to the Judicial Conference and its committees, and to 1,500 federal judges and 27,000 Judiciary employees in more than 800 locations throughout the nation. As AO Director Leonidas Ralph Mecham testified in May before the Senate appropriations sub-

committee responsible for the Judiciary's budget, "Court operations throughout the Judiciary are affected by AO staffing reductions. For example, an annual seminar for court budget and accounting personnel was recently canceled due to a lack of AO staff. . . . Another example is our inability to provide timely information to decision makers who are attempting to develop policies of importance to the courts and the nation. Over the past five years, requests for information from Congress, the GAO and other interested parties have almost doubled while the AO staff responsible for gathering, processing, and interpreting court statistics has fallen by 15 percent. . . . The low staffing level and hiring freeze in the AO are also affecting our ability to support adequately Judiciary law enforcement activities, such as probation and pre-trial services. For example, the districts could make far greater use of home confinement and electronic monitoring if there were additional AO staff support available to provide training and on-site technical support."

**Judiciary Budget Growth from FY 91 to FY 96
(In Actual Dollars)**

	FY 91 (\$ in millions)	FY 96 (\$ in millions)	5-year Increase
Total Judiciary	\$2,036	\$3,052	50%
GSA Rent	\$257	\$529	106%
Defender Services	\$133	\$267	101%
Court Security	\$72	\$119	65%
Administrative Office	\$62	\$81	31%

Video continued from page 1

Videoconferencing covers a broad spectrum of video communications capabilities. A major federal court pilot program, conducted between 1991 and 1994, allowed court participants who were miles apart to see and communicate with each other as though they were in the same location. Even documents and physical evidence could be shared. In the pilot project, the Eastern District of

Texas, the Western District of Missouri, and the Middle District of Louisiana began using videoconferencing for prisoner civil rights proceedings; the Eastern District of North Carolina videoconferenced a prisoner mental competency hearing; and the Western District of Texas used the technology for certain routine bankruptcy proceedings. The participating courts considered the program a success for several rea-

sons: it reduced unproductive travel time, allowed more efficient case scheduling, and increased safety.

Videoconferencing of court proceedings now includes prisoner civil rights pretrial hearings, certain criminal pretrial proceedings, attorney-client interviews, and witness testimony in certain civil trials. Several district courts are presently implementing such systems. (See chart)

District courts with a substantial volume of civil rights prisoner petition filings may use videoconferencing as a case management tool that helps weed out frivolous claims at an early stage. Videoconferenced prisoner hearings also eliminate the cost, scheduling, and security concerns of transporting a prisoner or court personnel traveling to a prison. For example, the District of Hawaii is using videoconferencing for attorney-client consultations between the court and a prison facility on the mainland. In the Northern District of Mississippi, where prisoner civil rights filings amounted to 47 percent of total civil filings in 1995, and where the state recently informed the court it may no longer transport prisoners to the courthouse due to financial constraints, the district court sees videoconferencing as the way in which to realize substantial benefits.

Another form of videoconferencing, which the Executive Committee of the Judicial Conference recently endorsed, is one-way satellite videoconferencing, proposed by the Federal Judicial Center and backed by the Administrative Office. This program will provide more than 100 court sites with satellite broadcast downlink antennas. This satellite technology allows reception of one-way broadcasts by courts nationwide and can be used to simultaneously broadcast training programs and education courses to multiple courts.

Congressional appropriations committees have urged the Judicial Conference and particularly the Federal

U.S. District Courts Implementing Videoconferencing Programs

Program/Sponsor	Court	Current	Projected
Routine Bankruptcy Hearings (JCUS Program)	W.D. Tex.	X	
	S.D. Iowa	X	
Prisoner Civil Rights Pretrial Proceedings (JCUS Program)	E.D. Ark.		FY 96
	C.D. Ill.		FY 96
	N.D. Ill.		FY 96
	S.D. Ill.		FY 96
	S.D. Ind.		FY 96
	W.D. Mo.	X	
	S.D. Iowa		FY 96
	M.D. Ind.		FY 96
	D. Nev.		FY 96
	D. N.J.		FY 96
	E.D. Tex.	X	
	N.D. Tex.		FY 96
	S.D. Tex.		FY 96
	M.D. Ga.		FY 96
	E.D. La.		FY 96
	N.D. Miss.		FY 96
	E. D. Pa.		FY 96
	M.D. Pa.		FY 96
Certain Criminal Proceedings Upon Consent (Bureau of Prisons And U.S. Marshals Service Program)	E.D. Pa.	X	
Attorney-Client Interviews & Certain Pretrial Matters (Bureau of Prisons and U.S. Marshals Service Program)	D. Or.	X	
	E.D. Pa.	X	
Attorney-Client Interviews (Hawaii Federal Public Defender Organization Program)	D. Hawaii	X	

Judge John Minor Wisdom Receives ABA Medal

Judge John Minor Wisdom (5th Cir.) has been named the 1996 recipient of the American Bar Association Medal. The ABA Medal, the highest honor given by the association, is conferred only in years in which a nominee is judged to have "rendered conspicuous service to the cause of American jurisprudence."

In his 1993 presentation of the Medal of Freedom to Wisdom, President Clinton said he was, "a truly first-class legal scholar who writes brilliant opinions. . . . He is a son of the Old South who became an architect of the new South."

Wisdom's notable opinions include the landmark opinion on voting rights in *United States v. State of Louisiana* in 1963, and his historic



Judge John Minor Wisdom

opinions to open the University of Mississippi to black students in *Meredith v. Fair* in 1962. "Judge Wisdom was a moral and intellectual

leader on a court that made heroic decisions despite strong pressures from regional political leaders of the times, and often risking personal harm," said ABA president Roberta Cooper Ramo.

Wisdom practiced law in New Orleans from 1929 until 1957, when he was appointed to the Fifth Circuit Court of Appeals. He served from 1975 on the Special Court, Regional Rail Reorganization Act of 1973, and on the Judicial Panel on Multidistrict Litigation from 1968 to 1979, serving as chief judge from 1973 to 1979. In 1988, Wisdom received the Edward J. Devitt Distinguished Service to Justice Award and in 1993, the Medal of Freedom.

Judicial Center, to make greater use of video technology. The Judicial Conference's Automation and Technology Committee has endorsed the development and use of videoconferencing technology as part of its 3- to 5-year vision for automation of the federal courts. The Federal Judicial Center is committed as well to the use of video communications as an integral part of its educational programs.


Videoconferencing has fostered several cooperative ventures between branches of government. For some attorney-client interviews and certain pretrial matters, the Eastern District of Pennsylvania and the District of Oregon work with the Bureau of Prisons and the U.S. Marshals Service in programs linking courthouses to federal prison facilities. The Southern District of Iowa conducts prisoner civil rights hearings as a participant in a General

Services Administration funded program linking the district to the State of Iowa's videoconferencing network.

Many more districts experiencing expanding prisoner caseloads are beginning to explore similar videoconferencing partnerships with state governments as a means to expedite caseloads. For example, in the Central District of Illinois, the State of Illinois Department of Corrections will soon install a videoconferencing network linking 11 correctional facilities, two administrative facilities, and two county courthouses. The department is interested in conducting a 6-month pilot project with the Illinois district courts using the network for prisoner court appearances. In Indiana, which ranks fourth in the nation in per capita federal habeas corpus petitions, the Southern District of Indiana is exploring a connection to a network linking state correc-

tional facilities, operated by the state's Department of Corrections.

The AO is working with the Department of Justice as it develops an implementation plan for videoconferencing on a nationwide scale. AO representatives met with telecommunications and technology development staff of the Executive Office for the U.S. Attorneys to be briefed on their program to evaluate and acquire videoconferencing equipment. Their efforts will be a valuable source of information and will assist the Judiciary in its own videoconferencing program.

Closer to home, court staff attending the recent Automation Managers Conference at the AO, were shown how desktop videoconferencing is possible using personal computers. The demonstration generated a great deal of interest in the technology and its potential application within the Judiciary. 

Technology Increases Public Access to Federal Court Information

The federal Judiciary has a proven track record of successfully exploring and employing technology to enhance public access to court information, a representative of the Judicial Conference recently told a Senate committee.

"In addition to the traditional methods of publishing information and making paper documents available, the Judiciary has been making use of appropriate technologies that expand access further. The Judiciary has made this responsibility a priority in planning," said Judge Royce C. Lamberth (D.D.C.). A member of the Judicial Conference's Committee on Automation and Technology, Lamberth testified in July before the Senate Committee on Rules and Administration, which is studying public access to government information in the 21st century.

In his opening remarks, the committee chair, Senator John Warner (R-VA), noted, "[A]s elected representatives, we have an obligation to ensure that the American people have equitable and reasonable access to information concerning the workings of our government. Indeed, the very foundation of a representative government is an informed citizenry." To this end, Warner said the committee will produce a report to serve as the basis of forthcoming legislation to amend and update Title 44 of the U.S. Code, which codifies the government's printing procurement system.

The success of the Judiciary's programs for access to information is demonstrated by the fact that there are more than 30,000 registered users of the Public Access to Court Electronic Records (PACER) system, said Lamberth. This electronic bulletin board system, which provides case and docket information, will handle more than 3 million requests for information in fiscal year 1996.



(L to R) Senator John Warner (R-VA) and Judge Royce C. Lamberth (D. D.C.) talked before the hearing last month.

Court automated voice response systems will respond to more than 4 million calls this year. The Judiciary's Internet site (www.uscourts.gov) provides access to a variety of Judiciary publications and general court information, registering more than 10,000 hits a month. In addition, all federal appellate court slip opinions are being collected by a consortium of law schools and provided free of charge to the public through each school's Internet web site.

"These public access programs meet the needs of the Judiciary's customers, from those who may only be able to come into the office, or call on the telephone, to those corporate entities which access on-line databases to gain information without diverting court staff's time from other service responsibilities," Lamberth said in his testimony.

In addition, the courts constantly are testing new technology in an attempt to better manage the constant growth in caseloads. One successful prototype is in the U.S. District Court for the Northern District of Ohio, where the court has been able to handle massive maritime asbestos cases by using the Internet to make

filing and accessing information easier for all parties involved.

As the Judiciary tests new technologies, it must balance a concern for accuracy and security with an interest in wide accessibility, Lamberth said. While these complex issues are just beginning to be examined by the Judiciary plans are being made for a future that will include the inevitable expansion in the use of electronic information.

"The new initiatives currently examined, combined with the Judiciary's strong management focus on information technology improvements, signal that the Judiciary's past successes will continue," said Lamberth. "The Judiciary is committed not only to making old processes work better, but also to creating new ways of working that are more productive, efficient, and effective. These improvements will enable the Judiciary to deliver to the public better service at a lower cost."

17-18 Tuesday- Wednesday
Judicial Conference of the United States

25-27 Wednesday-Friday
Workshop for Judges of the Eleventh Circuit

OCTOBER

3-4 Thursday-Friday
Workshop for Judges of the First Circuit

7-8 Monday-Tuesday
Advisory Committee on Criminal Rules

7-11 Monday-Friday
Orientation for Newly Appointed Magistrate Judges

13-16 Sunday-Wednesday
Seventh Circuit Conference

28-November 1 Monday-Friday
Video Orientation for Newly Appointed District Judges

MAGISTRATE JUDGE, Southern District of New York

The United States District Court for the Southern District of New York is accepting applications for the position of full-time Magistrate Judge at New York, New York. The duties of the position are demanding and wide ranging and will include (1) conduct of preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; (4) trial and disposition of civil cases upon consent of litigants; and (5) assignment of additional duties not inconsistent with the Constitution and laws of the United States. To be qualified for appointment, an applicant must (a) be a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands for at least five years; (b) have been engaged in the active practice of law for a period of at least five years (with some substitutions authorized); (c) be less than 70 years old; and (e) not be related to a judge of the district court. The present salary of the position is \$122,912 per annum. Candidates should submit applications to Clifford P. Kirsch, District Court Executive, U.S. Courthouse, Room 820, 500 Pearl Street, New York, NY 10007-1312, Tel: (212) 637-0500. An original plus 12 copies of a cover letter, resume and application must be received by **October 21, 1996**. Application forms are available in the District Executive's Office.

FEDERAL PUBLIC DEFENDER, District of Massachusetts

The United States Court of Appeals for the First Circuit is now accepting applications from all qualified persons for the position of Federal Public Defender for the District of Massachusetts. The office is headquartered in Boston, Massachusetts, with a branch office in Concord, New Hampshire. The Federal Public Defender provides federal criminal defense services to individuals unable to afford counsel as defined in federal law. An applicant must be/have (1) a member of good standing in the bar of the state in which he or she is admitted to practice; (2) a minimum of seven years criminal trial experience, preferably with significant federal trial experience, which demonstrates an ability to provide zealous representation of consistently high quality to criminal defendants; (3) the ability to effectively administer the office; (4) a reputation for integrity; and (5) a commitment to the representation of those unable to afford counsel. The term of appointment is four years with an annual salary of \$115,200.00. Application materials can be obtained by writing to Vincent Flanagan, Circuit Executive, Office of the Circuit Executive, J.W. McCormack Post Office and Courthouse, Room 1425, Boston, MA 02109. Application materials are also available at all Federal Circuit and District Clerk's offices in the First Circuit. Completed applications must be received no later than **October 7, 1996**.

FEDERAL PUBLIC DEFENDER, District of Puerto Rico

The United States Court of Appeals for the First Circuit is now accepting applications for the position of Federal Public Defender for the District of Puerto Rico. The Federal Public Defender provides federal criminal defense services to individuals unable to afford counsel. The defender supervises a staff of nine including lawyers and support personnel. The office is headquartered in Hato Rey, Puerto Rico. An applicant must be/have (1) admitted to practice before the United States District Court of Puerto Rico or a member of good standing in the bar of the state in which he or she is admitted to practice; (2) a minimum of seven years criminal trial experience, preferably with significant federal trial experience, which demonstrates an ability to provide zealous representation of consistently high quality to criminal defendants; (3) the ability to effectively administer the office; (4) a reputation for integrity; (5) a commitment to the representation of those unable to afford counsel; (6) fluent in both English and Spanish; and (7) available to commence employment on or before January 1, 1997. The term of appointment is four years with an annual salary of \$115,200.00. To receive a copy of this application and materials, contact Vincent Flanagan, Circuit Executive, Office of the Circuit Executive, J.W. McCormack Post Office and Courthouse, Room 1425, Boston, MA 02109. Completed applications must be received no later than **September 27, 1996**.

EQUAL OPPORTUNITY EMPLOYERS

Electronic Public Access Program Offers Variety of Information

For the past seven years, the Judiciary's Electronic Public Access program has made access to court information by the general public faster and easier. Together, these specific applications provide a comprehensive program of electronic public access that meets a myriad of needs and requirements, providing a basic level of access to the public at little or no cost, while also offering more sophisticated service at reasonable costs.

The Supreme Court of the United States

■ **The U.S. Supreme Court Electronic Bulletin Board System** provides on-line access to the court's automated docket, argument calendar, order lists, slip opinions, rules, bar admission forms and instructions; court tour information; special notices; and general information. The automated docket posted on the Bulletin Board System (BBS) is current as of the preceding business day. Slip opinions and orders are posted within a few days after their release. This BBS contains opinions issued during October Terms 1993, 1994, and 1995. Access to the BBS is presently provided at no cost.

■ **The U.S. Supreme Court Clerk's Automated Response System (CARS)** permits a caller using a standard touch-tone telephone to obtain the status of cases on the U.S. Supreme Court automated docket from an automated voice synthesizer response system. Callers may receive case information, bar admission information, or speak directly to a clerk. Callers can access information by using the Supreme Court docket number or the case name.

Appellate, District, and Bankruptcy Courts

■ **The Voice Case Information System (VCIS)** uses an automated

voice response system to read a limited amount of bankruptcy case information directly from the court's database in response to touch-tone telephone inquiries. The free service is now operating in approximately 75 bankruptcy courts.

■ **Appellate Voice Information System (AVIS)** is a comparable service to VCIS, which enables a caller to gain appellate case information by use of a touch-tone telephone. AVIS is currently available in the District of Columbia, First, Second, and Fifth Circuits, and is expected to be implemented in additional circuits this year. AVIS is free to the public.

■ **The Appellate Bulletin Board System (ABBS)**, available in all but one federal appellate court, offers public users electronic access to appellate court decisions (slip opinions) and other court information such as oral argument calendars, case dockets, local court rules, notices and reports, and press releases. Information on these systems can be viewed on-line or automatically downloaded into a user's computer. In accordance with Judicial Conference policy, most appellate courts charge a user fee for this service.

■ **Public Access Terminals** to obtain pertinent case and docketing information are provided free of charge for the public and are located in the clerk of court's office in all appellate, district, and bankruptcy courts.

■ **The Public Access to Court Electronic Records (PACER)** system allows any user with a personal computer to dial-in to a district or bankruptcy court computer and retrieve official electronic case information and court dockets usually in less than a minute. Each court controls its own computer system and case information database; therefore, there are some variations among jurisdictions as to the information of-

ferred. Typically, information currently available through PACER includes basic case information, docket information, index information, and opinions. Many jurisdictions offer 800 telephone lines to eliminate long distance toll charges.

User fee charges for PACER service have been instituted in most courts. However, the Schedule of Fees established by the Judicial Conference of the United States permits courts to "exempt persons or classes of persons from the fees in order to avoid unreasonable burdens and to promote public access to such information." This exemption language is intended to accommodate those users who might otherwise not have access to court information in this electronic form. Classes of persons who may be exempted from the fee include indigents, bankruptcy case trustees, not-for-profit organizations, and voluntary Alternate Dispute Resolution neutrals.

■ **The Judiciary's Internet Web Site** (www.uscourts.gov) contains general information on the Judiciary, numerous publications, and proposed rules for public comment. Several individual courts have also established Internet sites and offer court information. In addition, numerous Internet web sites have independently arranged to offer Judiciary information, such as opinions and court rules. A consortium of law schools, generally one from each circuit, provides free access to appellate slip opinions through each school's Internet Web Site. (<http://ming.law.vill.edu/Fed-Ct/fedcourt.html>) The member law schools have complete responsibility for retrieving the opinions and uploading them to the Internet.

JUDICIAL MILESTONES

Appointed: Gary A. Fenner, as U.S. District Judge, U.S. District Court for the Western District of Missouri, July 26.

Appointed: Robert L. Hinkle, as U.S. District Judge, U.S. District Court for the Northern District of Florida, August 7, 1996.

Appointed: Lawrence E. Kahn, as U.S. District Judge, U.S. District Court for the Northern District of New York, August 2.

Appointed: Mary Ann Vial Lemmon, as U.S. District Judge, U.S. District Court for the Eastern District of Louisiana, July 26.

Appointed: Arthur Nakazoto, as U.S. Magistrate Judge, U.S. District Court for the Central District of California, August 13.

Appointed: Dean D. Pregerson, as U.S. District Judge, U.S. District Court for the Central District of California, August 8.

Appointed: James F. Stiven, as U.S. Magistrate Judge, U.S. District Court for the Southern District of California, August 5.

Reappointed: Senior Judge John D. Butzner (4th Cir.), to the special division of the Court of Appeals for the District of Columbia Circuit to appoint independent counsel, by Chief Justice Rehnquist, for a 2-year term, effective October 26.

Reappointed: Senior Judge Peter T. Fay (11th Cir.), to the special division of the Court of Appeals for the District of Columbia Circuit to appoint independent counsel, by Chief Justice Rehnquist, for a 2-year term, effective October 26.

Reappointed: Judge David B. Sentelle (D.C. Cir.), to the special division of the Court of Appeals for the District of Columbia Circuit to appoint independent counsel, by Chief Justice Rehnquist, for a 2-year term, effective October 26.

Elevated: Bankruptcy Judge C. N. Clevert, to U.S. District Judge, U.S. District Court for the Eastern District of Wisconsin, July 31.

Elevated: Magistrate Judge Nina Gershon, to U.S. District Judge, U.S. District Court for the Eastern District of New York, August 1.

Elevated: Magistrate Judge Ann D. Montgomery, to U.S. District Judge, U.S. District Court for the District of Minnesota, August 6.

Elevated: Magistrate Judge Frank R. Zapata, to U.S. District Judge, U.S. District Court for the District of Arizona, August 2.

Senior Status: Judge Robert R. Beezer, U.S. Court of Appeals for the Ninth Circuit, July 31.

Senior Status: Judge George La Plata, U.S. District Court for the Eastern District of Michigan, August 3.

Senior Status: Judge H. Ted Milburn, U.S. Court of Appeals for the Sixth Circuit, July 1.

Retired: Magistrate Judge Joseph Reichmann, U.S. District Court for the Central District of California, August 12.

Deceased: Senior Judge A. Sherman Christensen, U.S. District Court for the District of Utah, August 13.

THE THIRD BRANCH

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Please direct all inquiries and address changes to *The Third Branch* at the above address.

JUDICIAL BOXSCORE

As of September 1, 1996

Courts of Appeals	
Vacancies	16
Nominees	8
District Courts	
Vacancies	42
Nominees	19
Court of International Trade	
Vacancies	0
Nominees	0
Courts with "Judicial Emergencies"	18

Chief Justice Names Judicial Conference Chairs



Judge Norman H. Stahl

The Chief Justice has named three new Judicial Conference committee chairs, effective October 1, 1996.

Judge Norman H. Stahl (1st Cir.) succeeds Judge Robert E. Cowen (3d Cir.) as chair of the Committee on Security, Space and Facilities. Judge Edward B. Davis (S.D. Fla.) succeeds Judge H. Ted Milburn (6th Cir.), who resigned



Judge Edward B. Davis

due to illness, as chair of the Committee on the Administrative Office. Judge Fern M. Smith (N.D. Calif.) succeeds Judge Ralph K. Winter Jr. (2d Cir.) as chair of the Advisory Committee on the Rules of Evidence. These appointments are in addition to those noted in the August issue of *The Third Branch*.

Except for the Executive and Budget Committees, committee



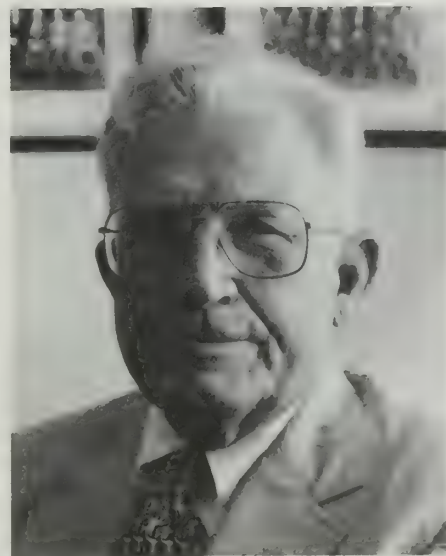
Judge Fern M. Smith

terms are usually for three years, with one reappointment possible. Five to six years of committee service, including past committee assignments, is considered the maximum a member may serve. The Chief Justice retains all appointment authority and exercises full discretion in selecting those he wishes to appoint and in determining their tenure.

Alien Terrorist Removal Court Members Selected

The five members of the new U.S. Alien Terrorist Removal Court have been appointed by Chief Justice Rehnquist. They are Judges Earl H. Carroll (D. Ariz.), who will serve as chief judge, Michael A. Telesca (W.D. N.Y.), David D. Dowd Jr. (N.D. Ohio), William C. O'Kelley (N.D. Ga.) and Alfred M. Wolin (D. N.J.). The length of appointment to the court is five years, although the original appointees will serve staggered terms of one to five years.

The court was created by the Antiterrorism and Effective Death Penalty Act of 1996, which was signed by the President on April 24, 1996, as



Chief Judge Earl H. Carroll

P.L. 104-132. By law, the court consists of five U.S. district court judges from five judicial circuits. The court has the authority to conduct all proceedings based on applications for removal brought by the Attorney General to determine whether an alien should be removed from the United States on the grounds of being an alien terrorist.

The Alien Terrorist Removal Court is modeled after the special court created by the Foreign Intelligence Surveillance Act. The court's decisions are appealable to the U.S. Court of Appeals for the District of Columbia.

Judge Norma L. Shapiro Brings Lawyers and Judges Together

Judge Norma L. Shapiro was appointed to the U.S. District Court for the Eastern District of Pennsylvania in 1978. She is presently chair of the American Bar Association's Judicial Division.

Q: As chair-elect of the American Bar Association's Judicial Division (JD), what role do you see the division playing? What would you like to accomplish during your tenure as chair?

A: The Judicial division (it used to be the Judicial Administration Division, but we feel the JD more properly describes our role) is an organization where judges, lawyers and academic persons concerned with the courts, provide assistance in improving the administration of justice and offer educational and social activities for its members. The ABA is a place where judges and lawyers can work together and with other entities on issues of common interest, within the ethical constraints imposed on judges by their special roles. My particular goal is shared by the ABA itself: it is to show special concern for the independence of the Judiciary, to determine what judges can do to understand their proper role, and to protect and defend that role.

Q: Judicial independence has been under fire in recent months. What are your views on this?

A: My views mirror those of Chief Justice Rehnquist when he called an independent Judiciary one of the "crown jewels" of our system of government. I believe

that independent state and federal Judiciaries are fundamental to preserving the rule of law. We have to make clear that judges do not oppose informed criticism of their decisions. The occasionally improper conduct of judges is a proper area of concern. However, there should not be improper personal attacks. I took heart during the budget crisis when Congress responded to Chief Justice Rehnquist's communication to keep the Judiciary budget independent and not permit the courts to be closed even though other government agencies were closing. Congress also recognized the importance of the Judiciary by funding education efforts for judges through the Federal Judicial Center, the State Justice Institute, and law enforcement agencies. Judicial independence is generally recognized by both federal and state legislatures, but sometimes in times of stress or frustration, we lose sight of it.

I'm hoping to form an ABA committee to help judges understand what is the proper and improper response to criticism—a sort of judicial support group. Under former ABA President Roberta Cooper Ramo's leadership, there was a similar mentor program, chaired by Judge William M. Hoveler (S.D. Fla.), to help judges assigned to high profile cases deal with their management and the media. I hope this committee will be a group judges can turn to when they don't know what to do about criticism perceived as unjust.

Q: In what ways and on what issues do you see federal and state courts working together for their mutual benefit? What is the

JD's relationship with the Judicial Conference of the United States?

A: The JD is a splendid example of groups of federal and state appellate, trial, administrative, and special court judges (together with the lawyers who practice in, manage, and study these diverse courts) working together to explore common views and consider common projects. I value the JD and my role in the ABA because I am able to meet so many judges and learn so much. I think we have common problems, and in seeking common solutions we achieve mutual understanding. Federal-state judicial councils are a good initiative and should be supported.

The JD relationship with the Judicial Conference is, first of all, one of great respect. Many of our members are committee chairs or members of committees of the Judicial Conference. I think the ABA hopes for a strengthened relationship with the Judicial Conference, and I'm hopeful the JD will be involved in those efforts.

Q: The Civil Justice Reform Act, an increased emphasis on innovative case management, and greater use of automation are changing the lives of federal judges. Are these positive developments?

A: Yes, as long as you don't crunch numbers and pressure court personnel to achieve dispositions regardless of their merit. As a judge, your goal must be first and foremost the just determination of litigation. Speed and efficiency contribute to that just determination so we should investigate the

proper uses of automation and technology with an open mind and an experimental attitude, and accept automation where it is an improvement. But we should reject change for the sake of change, or if it threatens cherished values. We should be conscious that increased automation can sometimes inadvertently remove the human element. Anyone who has contacted a computerized telephone system with voice mail understands the frustration involved! Also, we have to be concerned that technology may further isolate the Judiciary from the community; there are pros and cons in terms of court access. At any rate, we shouldn't be ashamed or hesitant to seek resources for judges and the justice system where necessary for the proper administration of justice.

Q: Is there a danger that judges are becoming administrators rather than arbiters of justice?

A: There is a danger, but I don't believe that the courts of this country have sacrificed justice. Our courts are the envy of the free world. You need some administration to have justice. It's a question of balancing, and judges balance every day of their lives. We should be sensitive to the danger, but as long as persons of ability and integrity are our judges, they will resist becoming administrators rather than arbiters of justice.

Q: The JD is involved in education seminars for judges. Can you tell us more about this work?

A: We especially are proud of our involvement with educational programs for judges and lawyers. The ABA's Annual and Midyear meetings provide opportunities for important educational programs covering substantive and ad-

ministrative topics. We also offer educational programs apart from these meetings, including those of the Appellate Judges Conference for appellate judges generally, and chief judges of intermediate appellate and appellate staff attorneys, specifically.




The conference offers at least seven seminars annually for appellate judges and nonjudicial staff to discuss critical issues facing the courts with colleagues, leading scholars, and active practitioners. In addition to our fine relationships with the Federal Judicial Center and National Center for State Courts, our Traffic Court Program provides a nationally recognized annual seminar.

We have a close relationship with the National Judicial College (NJC), formed in 1963 by the ABA joint Committee for Effective Administration of Justice, chaired by Justice Tom C. Clark of the U.S. Supreme Court. The ABA Board of Governors elects the 15-member NJC Board of Trustees. Currently, three trustees are nominated by the Council. The NJC provides numerous courses (over 50 this year alone) and conferences at its campus in Reno, Nevada and other satellite sites for judges of all jurisdictions and levels.

Q: What has, or could be, done to foster better relationships between the Judiciary and lawyers?

A: Bar associations offer an ideal opportunity for this. Bar association activities provide an ethical way for judges to interact with lawyers and understand their problems and to help them understand our problems. I was active in the Philadelphia Bar Association before I became a judge.

There's a decline in civility between lawyers, although I have not observed a lessened respect for judges. But law practice is no longer like living in a small town where everyone knows everyone; it is more depersonalized now and that creates tensions. Judges are under a great deal of pressure. Even if we didn't have criticism derived from our public exposure, we would criticize ourselves in order to seek self-improvement. The opportunity for personal contact and interaction in a bar association helps avoid undesirable attacks on judges and lawyers and leads us to constructive activities.

Each of us has to continue the mutual effort to form a more perfect union. Those who are privileged to be elected or appointed judges, whether state or federal, have a special obligation to protect our Constitution. Acting together, through a professional association, helps us to meet our responsibilities. We can educate ourselves to manage our work better, and educate others to understand the importance of an independent Judiciary. We can work with lawyers to encourage respect for the rule of law locally, nationally, and even internationally. Also, you can't underestimate the importance of the socialization, the friendships that we form, that nourish our spirit, and add to the joy of judicial life. 

Bankruptcy continued from page 1
creation of 11 new bankruptcy judgeships, and legislation creating additional bankruptcy judges is now pending in the House. The bill, H.R. 2604, would establish four additional permanent bankruptcy judgeships in the Central District of California and one in the District of Maryland. It would add one additional temporary judgeship each to the Southern District of Florida, the Eastern District of Michigan, the District of New Jersey, the Eastern District of New York, the Northern District of New York, and the Eastern District of Pennsylvania.

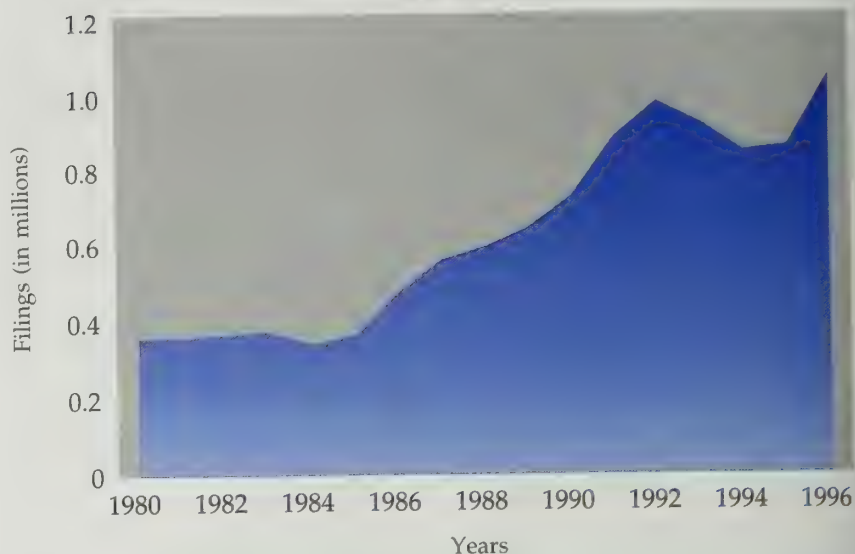
Of the total number of bankruptcy filings for the 12-month period ending June 30, 1996, there were 712,129 Chapter 7 filings, an increase of 22.5 percent over the 581,390 filings in the same period in 1995. The next largest group of filings were Chapter 13 filings at 316,024, a rise of 20.4 percent over the 262,551 filings in the same period in 1995. Chapter 11 was the only chapter to show a drop. There

were 12,859 Chapter 11 filings in the 1996 period, a 2.7 percent drop from 13,221 in 1995. Chapter 12 filings rose in this period, from 904 in 1995 to 1,063 in 1996. Business filings totaled 52,938. Non-business filings totaled 989,172.

For the Judiciary, June 30 was the end of the third quarter of fiscal year 1996. In the third quarter of FY 96,

there were 297,162 bankruptcy cases filed, up from the 266,149 bankruptcy cases filed in the second quarter, and the 244,494 cases filed in the first quarter of FY 96. Total business filings in the third quarter numbered 13,992, and non-business filings were 283,170.

**Total Bankruptcy Filings Per Year
(1980-1996)**



THE THIRD BRANCH

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Newsletter
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Vol. 28
Number 10
October 1996

Judicial Conference Convenes Biannual Meeting, Honors Branch Leaders



Chief Judge Gilbert S. Merritt (6th Cir.) presents to Chief Justice William H. Rehnquist the Judicial Conference's resolution honoring his ten year anniversary.

At its biannual meeting last month, the Judicial Conference disapproved a proposed amendment to the Federal Rules of Civil Procedure and honored two judicial branch leaders. By a voice vote, the Conference declined to approve a proposed amendment to Rule 48 of

the Federal Rules of Civil Procedure, which would have required the initial empaneling of a jury of 12 persons in all civil cases.

The Judicial Conference also adopted a resolution paying tribute to Chief Justice William H. Rehnquist

See Conference on page 2

End of Session Legislation Favors Judiciary

The 104th Congress, which concluded earlier this month, brought enactment of line-item veto legislation; extended the life of the Parole Commission; reformed prisoner litigation; streamlined habeas corpus petitions; established mandatory victim restitution provisions; and denied judges a cost-of-living increase. A detailed wrap-up of the 104th Congress will appear in the November issue of *The Third Branch*.

In the waning days of its second session Congress approved two measures of particular interest to the Judiciary: a fiscal year 1997 spending bill and the Federal Courts Improvement Act.

FY 97 Budget Passes

The federal government was spared another government shutdown when Congress and the President agreed to an omnibus FY 97 funding bill on the last day of FY 96. The Omnibus Consolidated Appropriations Act, P.L. 104-208, provides the Judiciary with an overall funding increase

See Legislation on page 5

INSIDE

Resolution Honors the Chief Justice	3
Federal Courts Improvement Act Passes	5
Judges Denied COLA for Fourth Year	7




Members of the Executive Committee of the Judicial Conference (left to right): Judge Michael M. Mihm (C.D. Ill.); Chief Judge Richard S. Arnold (8th Cir.); Chief Judge Glenn L. Archer, Jr. (Fed. Cir.); Chief Judge Gilbert S. Merritt (6th Cir.), outgoing chair; Chief Judge Henry A. Politz (5th Cir.); Judge Wm. Terrell Hodges (M.D. Fla.), incoming chair; AO Director Leonidas Ralph Mecham; and Judge Clarence A. Brimmer (D. Wyo.).

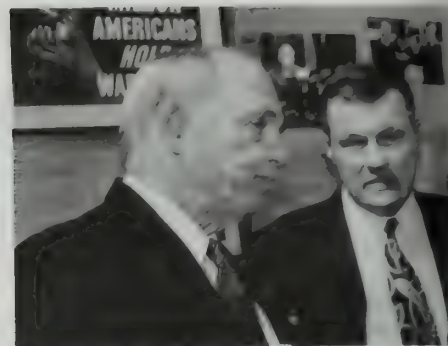
on the tenth anniversary of his appointment as Chief Justice and as presiding officer of the Conference. At a dinner hosted by the Judicial Conference's Executive Committee and Administrative Office director Leonidas Ralph Mecham, the Chief Justice was recognized for his leadership and many notable accomplishments in judicial administration.

In a separate resolution, the Executive Committee paid tribute to Chief Judge Gilbert S. Merritt (6th Cir.), its outgoing chair, as an insightful and politically astute leader.

The Conference also received a report from Chief Judge Richard Arnold (8th Cir.), chair of its Budget Committee, who indicated that the Chief Justice had written to congressional leaders asking that action be taken to ensure continuous funding for the Judiciary in fiscal year 1997. In his September 13 letter, Chief Justice Rehnquist wrote, "Full year funding is the only way to ensure that the courts have the resources

necessary to provide our citizens with the judicial services to which they are entitled." At the time, the Commerce, Justice, State, and Judiciary appropriations bill had passed the House, but had not been taken up by the full Senate. (See the chart on the Judiciary's appropriation, page seven.)

The Conference voted to authorize the AO to transmit to Congress a request for an additional 21 permanent and 12 temporary district court judgeships and agreed to pursue legislation to extend or convert 11 existing temporary judgeships, as approved by the March 1996 Judicial Conference, separately from new judgeship requests. (A chart on page three lists the districts and judgeships.) The new judgeship request follows detailed reviews by the courts and the Conference's Judicial Resources Committee. New Article III judgeships were last created in December 1990. 



Chief Judge Peter C. Dorsey (D. Conn.) with Judge Wm. Terrell Hodges (M.D. Fla.)



Chief Judge John Garrett Penn (D. D.C.) and Judge J. Clifford Wallace (9th Cir.)



Chief Judge Wm. Matthew Byrne, Jr. (C.D. Calif.)

Recommendations for Additional U.S. District Courts Judgeships

District	Current Judgeships	Judicial Conference Recommendations
Second Circuit		
New York-Northern	5	1T
New York-Eastern	15	3P
New York-Western	4	1T
Fourth Circuit		
North Carolina-Western	3	2P
South Carolina	9	1T
Fifth Circuit		
Louisiana-Middle	2	1T
Sixth Circuit		
Kentucky-Eastern	4.5	1T
Tennessee-Eastern	5	1T
Seventh Circuit		
Indiana-Southern	5	1T
Ninth Circuit		
Arizona	8	2P
California-Eastern	7	1P,1T
California-Southern	8	2P
Nevada	4	2P
Oregon	6	1P
Washington-Western	7	1T
Tenth Circuit		
Colorado	7	1P,1T
New Mexico	5	1P,1T
Eleventh Circuit		
Alabama-Middle	3	1P
Florida-Middle	11	3P,1T
Florida-Southern	16	2P
Total		21 P, 12 T¹

P = Permanent

T = Temporary. In a district where there is a temporary judgeship, the first vacancy that occurs 5 years after the date of confirmation of the judge appointed to that position, shall not be filled.

¹ Includes 21 judgeships previously approved by the Judicial Conference in September 1994.

Resolution Honors Chief Justice Rehnquist on 10th Anniversary

The following is the text of a resolution adopted by the Judicial Conference.

On the occasion of his Tenth Anniversary as Chief Justice of the United States and as Presiding Officer of this body, the Judicial Conference of the United States pays tribute to William H. Rehnquist for his many notable accomplishments in judicial administration.

The distinguished leadership of the Chief Justice has served to reshape and strengthen the operation of the Judicial Conference and its committees in meeting current and anticipated challenges. Significant among the many achievements under his leadership is the study of the operation of the Judicial Conference and its committees shortly after his appointment as Chief Justice in 1986. The results of the year-long study produced structural and procedural revisions enabling the Conference to operate more openly and efficiently. The authority of the Executive Committee was strengthened, and for the first time, the Executive Committee chair was permitted to preside over the Judicial Conference in the absence of the Chief Justice. Conference and committee procedures were made familiar to all as agendas, calendars, and notifications of actions taken were widely distributed. The institution of term limits on committee service allowed greater participation in committee activities, and through the conscious efforts of the Chief Justice in making his appointments resulted in committee composition and leadership that is repre-

See Resolution on page 4

Resolution continued from page 3

sentative of the diverse make-up of the entire federal judiciary. In addition, Chief Justice Rehnquist has been inclusive in maintaining an open door to the leaders of the three national organizations of judicial officers and broadening participation by bankruptcy and magistrate judges on Judicial Conference committees.

Judges throughout the country

greatly appreciate the willingness of Chief Justice Rehnquist to become personally involved in major issues affecting the Third Branch. For example, he took the leadership role in 1989 on the issue of judicial pay and was instrumental in the resolution of the judiciary's appropriations crisis in fiscal year 1996.

The members of the Judicial Conference express their warmest and heartfelt congratulations and

sincere appreciation to Chief Justice Rehnquist for his strong, inspired leadership over the past ten years. We look forward to our continued association and anticipate additional achievements in the administration of justice under his tenure.

*Gilbert S. Merritt
Chairman of the Executive Committee
Leonidas Ralph Mecham
Secretary to the Conference*

Resolution Honors Chief Judge Gilbert S. Merritt

The following is the text of a resolution honoring Chief Judge Gilbert S. Merritt.

The current members of the Executive Committee, as well as those former members who served during his tenure, cannot let the term of their Chairman, Chief Judge Gilbert S. Merritt, expire without marking the event with words of appreciation.

Judge Merritt has been an outstanding Executive Committee chair. An insightful and politically astute leader, Judge Merritt has ably led the Committee through its handling of numerous complex issues, including universal drug testing, cameras in the courtroom, three-branch coordination, the adoption of the judiciary's first comprehensive long range plan, and the increasing scrutiny of the judicial branch by Congress. His low key, down-to-earth style fosters full and open discussion at Committee meetings; he understands the value of providing all Committee members an opportunity to air their disparate views. Then, with flawless timing, he channels the debate

toward consensus and moves the meeting on to the next matter. In the same manner, Judge Merritt deftly presides over the Judicial Conference sessions in the Chief Justice's absence.

Comfortable with the media, Judge Merritt was the first Executive Committee chairman to brief reporters following Judicial Conference sessions. His candor and openness have fostered greater public understanding of the uniqueness of the Third Branch and, in particular, the need for judicial independence. Always in good humor, our chair nevertheless knows when to display a little steel. He did so with excellent effect during the government shutdown early this year. Judge Merritt's timely outspokenness was a major

factor in rallying public opinion behind the need to continue the administration of justice without interruption.

To Judge Merritt, we give our heartfelt thanks. We will miss his Tennessee style, his sense of humor, and his warmth at both Conference sessions and Executive Committee meetings, and we are hopeful that opportunities to work together will continue to arise. We wish the best to him and Robin, as they experience life without the burdens of chairmanship and chief judgeship.

Current and former members of the Judicial Conference's Executive Committee who served during Chief Judge Gilbert S. Merritt's tenure as chair.



Chief Judge Gilbert S. Merritt (6th Cir.) receives the Executive Committee's resolution from Chief Justice William H. Rehnquist.

Legislation continued from page 1
of 7 percent over FY 96, with the Salaries and Expenses account receiving a 5 percent increase.

The success enjoyed by the Judiciary was achieved through a major effort by friends of the Judiciary in Congress and by liaison judges, including the Budget Committee members, and by the staff and director of the Administrative Office.

With the addition of fees, amounts available are sufficient to fully fund the financial plan approved by the Executive Committee for the Salaries and Expenses, Fees of Jurors, and Court Security accounts. Amounts available for Defender Services will fully fund current estimated obligations, with the exception of a \$5 per hour pay raise for private attorneys who represent indigent defendants under the Criminal Justice Act, which was specifically denied in report language. In doing so, the conferees noted their concern with the rising costs associated with the Defender Services account and directed the AO to take the necessary steps to moderate the rate of increase. The conferees also said that the funding for new defender organizations should be considered only after it is clear that adequate funding exists for current organizations.

The AO received an increase over FY 96, but is \$1 million below the revised request. The appropriations provided the Federal Judicial Center and the U.S. Sentencing Commission are slightly below the 1996 enacted level.

The House-Senate conference report on the Judiciary's portion of the FY 97 spending measure provided for:

- Transfer of \$500,000 from the Salaries and Expenses account for a Commission on Structural Alternatives for the Federal Courts of Appeals, if legislation was enacted to authorize the

establishment of the commission. The proposed commission, which grew out of legislation that was intended to split the Ninth Circuit, failed to be authorized in the 104th Congress.

- Clarification that the Judiciary will bear the cost only of special masters appointed subsequent to the enactment of the Prison Litigation Reform Act.
- Deletion of the appropriation included in the House version of the bill that would have provided funds for the Commission on the Advancement of Federal Law Enforcement.
- \$10 million for expenses related to the additional workload from the Antiterrorism and Effective Death Penalty Act of 1996. (The antiterrorism bill contains habeas corpus reforms and mandatory restitution provisions, and creates the Alien Terrorist Removal Court.)
- A one-year extension, to September 30, 1998, of the authorization for the Judiciary Automation Fund.

Congress Clears Federal Courts Improvement Act

S. 1887, the Federal Courts Improvement Act of 1996, cleared the Senate and the House just minutes before each body adjourned sine die. Within the final two weeks of the congressional session, the bill was held on the Senate floor for both political and substantive reasons totally unrelated to the bill. The delay resulted in several provisions being dropped from the bill, including the repeal of section 140 of P.L. 97-92, which bars annual cost-of-living adjustments for judges unless specifically authorized by Congress.

In the end, the improvements bill

passed both the Senate and House by unanimous consent. The bill contains 33 separate provisions that had been endorsed by the Judicial Conference and address administrative, financial, jurisdictional, and personnel needs of the judicial branch.


"Our improvements bill, which was basically noncontroversial in nature, seemed to fall victim to nearly every procedural and political ploy that exists," said AO Director Leonidas Ralph Mecham. "The fact that the bill was among the few that both houses cleared in their final minutes is a tribute to the many judges and the AO staff who kept a watchful eye on its progress and made the necessary contacts to ensure its passage."

Among the provisions contained in S. 1887 as enacted, are the following:

- The jurisdictional amount-in-controversy in diversity jurisdiction cases was raised from \$50,000 to \$75,000. The jurisdictional amount was last increased in 1986, when it went from \$10,000 to \$50,000.
- Title 28 U.S.C. § 1914 was amended to increase the civil filing fee from \$120 to \$150, with the first \$90 (rather than \$60) of each fee to be deposited into a special U.S. Treasury fund available to offset funds appropriated for the operation and maintenance of the courts. Civil filing fees were last increased in 1986, from \$60 to \$120.
- Federal authority for probation and pretrial services officers to carry firearms, if approved by the appropriate district court, was provided. In some jurisdictions, state law prohibits or limits officers from carrying weapons, even where court approval has been given.

See Legislation on page 6

Legislation continued from page 5

- The senior judge work certification procedures of 28 U.S.C. §371(f) was revised so that justices and judges who are not certified in one year may perform work in a subsequent year, then attribute the subsequent work to the earlier year in order to satisfy the certification requirement.
 - Trial of certain classes of petty offense cases by a magistrate judge, without the consent of the defendant was allowed; also, appeals to civil cases tried by magistrate judges will be heard only by appeals courts.
 - Subject to the availability of appropriated funds, appointment of sign language interpreters to provide services to a party, witness, or other participant in a judicial proceeding is allowed if the presiding judicial officer determines that such individual suffers from a hearing impairment.
 - Awards of costs, including attorney's fees and injunctive relief, against a federal officer or agency acting in an official capacity was prohibited.
 - The AO was authorized to prescribe interpreter performance examination fees. If the AO finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification, the director may prescribe for each examination a uniform fee for applicants to take such exam.
 - The system was changed for selecting the chief judge of the Court of International Trade to conform to the modified seniority system applicable to every other Article III court.
 - The Special Court, Regional Rail Reorganization Act of 1973, was abolished 90 days after the enactment of the Federal Courts Improvement Act of 1996.
 - The Civil Justice Expense and Delay Reduction reporting requirement on Demonstration and Pilot Programs was extended from December 31, 1996, to June 30, 1997.
 - Places of holding court were added in the District of Utah and in the Southern District of New York.
 - District judges in the Southern and Eastern Districts of New York will be allowed to reside within 20 miles of the district to which they are appointed.
- In addition to the section 140 provision, also dropped from the bill were
- parties' consent to a bankruptcy judge's findings and conclusions of law;
 - authorization for judicial officers to carry firearms;
 - the Sunshine in Litigation Act of 1996 added by Senator Herb Kohl (D-WI), amending Rule 26(c) of the Federal Rules of Civil Procedure, to limit the use of protective orders and the sealing of cases in civil actions;
 - reauthorization of the State Justice Institute;
 - the expansion of authority for bankruptcy administrators. 

Uphill Fight Brings Courts Bill Home



The Federal Courts Improvement Act spent more than two weeks on a roller coaster that would be the envy of any amusement park in America. At times the bill seemed to coast along, assured of easy passage, only to encounter an unexpected curve. Then it would travel an arduous uphill trip, often followed by a sharp turn to either the right or left. For two weeks every day, and sometimes every hour, brought new and unexpected forks in the road. There were hair-pin curves, apparent u-turns, and even occasional dead ends. Finally, minutes before reaching the finish line, a cadre of federal judges, joined by Administrative Office Director Leonidas Ralph Mecham and Assistant Director Mike Blommer and his legislative affairs staff, steered the roller coaster safely home.

"The trip traveled by our courts improvement bill was not for the faint of heart," said Mecham. "Unfortunately, as time went on, some provisions were dropped from the bill. But in the end, we have a measure that contains 33 items that will help improve the administration of our court system."

At first, it seemed as though debate on a bill to reauthorize the Federal Aviation Commission would tie-up the Senate until adjournment. When an agreement was reached, other roadblocks arose. At one time a hold prevented consideration of any bills that had been reported out by the Senate Judiciary Committee. At another time, the improvements bill was held hostage over issues relating to judgeships. As prob-

24-25 Thursday-Friday
Committee on International Judicial Relations

28-November 1 Monday-Friday
Video Orientation for Newly Appointed District Judges

NOVEMBER

18-20 Monday-Wednesday
Workshop for Judges of the Fifth Circuit

18-23 Monday-Saturday
Orientation for Newly Appointed District Judges

18-23 Monday-Saturday
Orientation for Newly Appointed Bankruptcy Judges

24-25 Sunday-Monday
Committee to Review Circuit Council Conduct and Disability Orders

OCTOBER

MAGISTRATE JUDGE, Middle District of Louisiana

Qualified applicants are sought for a full-time Magistrate Judge position in Baton Rouge. Application forms can be obtained by calling (504) 389-0321. Candidates should submit applications to Richard T. Martin, Clerk, U.S. District Court, P.O. Box 2630, Baton Rouge, LA 70821. Deadline is **November 29, 1996, at 5:00 p.m.**

MAGISTRATE JUDGE, Southern District of New York

There will be a Magistrate Judge position to be filled for the Southern District of New York at White Plains. Candidates should submit applications to Clifford P. Kirsch, District Court Executive, U.S. Courthouse, Room 820, 500 Pearl Street, New York, NY 10007-1312. An original plus ten copies of a cover letter, resume, and application must be received no later than **November 8, 1996.**

BANKRUPTCY CLERK, District of New Mexico

The U.S. Bankruptcy Court for the District of New Mexico is seeking applicants for the position of Clerk of Court. A general job description and details of qualifications and work environment are available at P.O. Box 546, Albuquerque, NM 87103-0546 or on the court's Internet homepage (<http://www.nmccourt.fed.us>). Send a letter of application and resume to Mark McFeeley, Chief Judge, at the above address. The court will begin reviewing applications after **November 15, 1996, and the position will remain open until filled.**

CHIEF DEPUTY CLERK, Fourth Circuit

The Chief Deputy Clerk acts for the Clerk in her absence and works closely with the management team in planning and implementing personnel, budget, and automation policy and decisions. Application deadline is **November 1, 1996.** Send resume and cover letter to Patricia S. Connor, U.S. Court of Appeals for the Fourth Circuit, 1100 E. Main Street, 5th Floor, Richmond, VA 23219.

CHIEF PROBATION OFFICER, Western District of Kentucky

The position is headquartered in Louisville, Kentucky, with divisional offices in Bowling Green, Owensboro, and Paducah. To apply, send six copies of a confidential letter of application and resume to Clerk of Court, Room 450, 601 West Broadway, Louisville, KY 40202 by **December 1, 1996.**

ASSISTANT DIRECTOR FOR PUBLIC AFFAIRS, Administrative Office of the U.S. Courts

The Administrative Office of the U.S. Courts seeks a senior executive to manage public affairs nationally. The incumbent is responsible for developing and coordinating a comprehensive communications program. Applicants must call (202) 273-2770 and request #97-OPAF-002 for required application procedures and qualifications. Deadline for the receipt of applications is **December 13, 1996.**


HOUSE OFFICE OF THE LEGISLATIVE COUNSEL

Law clerks who are interested in applying their interpretive and writing skills in the service of the legislative branch may wish to consider employment in the Office of the Legislative Counsel, a nonpartisan office that provides drafting services for the members and the committees of the U.S. House of Representatives. Starting salary: \$45,000 per year. Those interested in learning more about the opportunities in the House Legislative Counsel's Office should write to Pope Barrow, Deputy Legislative Counsel, Cannon House Office Building, Room 136, Washington, D.C. 20515.

EQUAL OPPORTUNITY EMPLOYERS

ms arose, judges stood ready to contact senators. Judges from Wisconsin, Alabama, Louisiana, Illinois, Missouri, and South Dakota played pivotal roles in keeping the bill alive.

As each hold was removed, it became the bill's primary adversary. Could the improvements legislation clear both houses before adjournment? It soon became evident that the only way to accomplish this was on the unanimous consent calendar, which does not require a vote of all members present. However, this required approach also resulted in the deletion of some provisions previously in the bill. Of particular note was the language that would have repealed Section 140, which required affirmative congressional action before judges can receive a pay raise. If time had been available to set a House-Senate conference on the bill, the repeal likely would have cleared both houses. The repeated holds made it impossible. Shortly before adjournment, a new version of the improvements bill was introduced in the House as H.R. 4314. This compromise measure became the substitute text in S. 1887. In the end, S. 1887, the Federal Courts Improvement Act, passed the Senate about a half-hour before it adjourned sine die. The House approved the bill the following day, just minutes before it adjourned.

"It would take a certified court reporter to track the trip traveled by our courts improvement bill," Mecham said. "Each time a roadblock arose, there were judges standing by willing to help clear the way. The final enactment of this meaningful legislation is a tribute to the entire judicial branch and to our friends in Congress." 

Judges Denied COLA for Fourth Year

The second session of the 104th Congress failed to produce an Employment Cost Index (ECI) adjustment for congressional members, top officials of the Executive branch, and federal judges. Indeed, section 637 of H.R. 3610, the Department of Defense Appropriations Act of 1997, contains a provision that denies top government officials a modest 2.3 percent ECI adjustment. As a result, and despite the efforts of the Judicial Conference and its committees, judges' associations, and the Administrative Office, judges will be deprived of a cost-of-living adjustment for a fourth consecutive year.

When it was introduced earlier this summer, the House Commerce, Justice, State, the Judiciary and Related Agencies appropriations bill contained funding for a judges' ECI adjustment. However, the House overwhelmingly approved an amendment to the bill denying congressional members, executive branch officials, and judges an ECI adjustment.

In late July, AO Director Leonidas Ralph Mecham wrote to Senator Richard Shelby (R-AL), the chair of the Subcommittee on Treasury, Postal Service, and General Govern-

See COLA on page 9

JUDICIAL BRANCH FUNDING

Dollars in thousands

	FY 1996 ENACTED APPROPRIATIONS	FY 1997 APPROPRIATIONS CONFERENCE	CHANGE FY 1996 TO FY 1997
Supreme Court	\$29,147	\$29,957	\$810
Court of Appeals for Federal Circuit	14,288	15,013	725
Court of International Trade	10,859	11,114	255
Court of Appeals, District Courts, & Other Judicial Services			
Salaries and Expenses	2,447,590	2,574,889	127,299
Defender Services	282,768	325,111	42,343
Fees of Jurors	59,028	67,000	7,972
Court Security	102,000	131,000	29,000
Administrative Office	47,500	49,450	1,950
Federal Judicial Center	17,914	17,495	(419)
Judiciary Trust Funds	32,900	30,200	(2,700)
Sentencing Commission	8,500	8,490	(10)
TOTAL JUDICIARY	\$3,052,494	\$3,259,719	\$207,225

JUDICIAL MILESTONES

Appointed: W. Craig Broadwater, as U.S. District Judge, U.S. District Court for the Northern District of West Virginia, September 3.

Appointed: James Parker Jones, as U.S. District Judge, U.S. District Court for the Western District of Virginia, August 30.

Appointed: Nanette K. Laughrey, as U.S. District Judge, U.S. District Court for the Western District of Missouri, August 26.

Appointed: Donald W. Molloy, as U.S. District Judge, U.S. District Court for the District of Montana, August 16.

Appointed: L. Stuart Platt, as U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, September 11.

Appointed: Dorina Ramos, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Texas, August 26.

Appointed: Edmund A. Sargus, Jr., as U.S. District Judge, U.S. District Court for the Southern District of Ohio, August 23.

Elevated: Magistrate Judge Joan B. Gottschall, to U.S. District Judge, U.S. District Court for the Northern District of Illinois, September 3.

Elevated: Judge Boyce F. Martin, Jr., to Chief Judge, U.S. Court of Appeals for the Sixth Circuit, succeeding Chief Judge Gilbert S. Merritt, October 1.

Elevated: Bankruptcy Judge Mark B. McFeeley, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of New Mexico, succeeding Chief Bankruptcy Judge Stewart Rose, September 3.

Elevated: Judge Michael Burrage, to Chief Judge, U.S. District Court for the Eastern District of Oklahoma, succeeding Chief Judge Frank H. Seay, October 1.

Elevated: Bankruptcy Judge Donald R. Sharp, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of Texas, September 1.

Elevated: Judge Joseph W. Hatchett, to Chief Judge, U.S. Court of Appeals for the Eleventh Circuit, succeeding Chief Judge Gerald Tjoflat, October 1.

Senior Status: Judge James L. Buckley, U.S. Court of Appeals for the D.C. Circuit, August 31.

Senior Status: Judge Robert M. Takasugi, U.S. District Court for the Central District of California, September 30.

Senior Status: Judge Nicholas Tsoucalas, U.S. Court of International Trade, September 30.

Retired: Bankruptcy Judge Robert John Hall, U.S. District Court for the Eastern District of New York, September 3.

Retired: Judge George La Plata, U.S. District Court for the Eastern District of Michigan, August 3.

FOR THE RECORD. . . "Today, our system of civil justice faces one of the greatest tests in its long history. The very foundation of our civil justice system and more than 500 years of the development of common law are under attack, including the right of trial by jury. We must continue to face these assaults by improving the administration of justice and maintaining its historic role in protecting the weak and disadvantaged."

—Senator Howell T. Heflin, *Congressional Record*, September 25, 1996

THIRD BRANCH

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JUDICIAL BOXSCORE

As of October 1, 1996

Courts of Appeals	
Vacancies	18
Nominees	8
District Courts	
Vacancies	44
Nominees	20
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	20

OLA continued from page 7

ment Appropriations, as well as Ranking Minority Member, Senator Bob Kerrey (D-NE), urging that a pay adjustment for judges be approved. A similar letter also was sent to Senator Mark Hatfield (R-OR), chair of the Committee on Appropriations, and Ranking Minority Member, Senator Robert Byrd (D-WV). The Senate reported out the appropriations bill without a provision blocking an ECI adjustment for top government officials, including judges. Although Senator Jesse Helms (R-NC) later offered an amendment on behalf of Senator Fred Thompson (R-TN) that would have denied an ECI adjustment to congressional members and cabinet officials, the amendment would not


have blocked an ECI adjustment for judges.

As the 104th Congress wound down, the House packaged an omnibus appropriations bill into the Defense Appropriations Conference Report. This bill included an amendment denying congressional members, executive branch officials, and judges an ECI adjustment for 1997. The House passed the bill and sent it to the Senate, which accepted the House provision in conference.

Proceeding on a different track was S. 1344, which was introduced in October 1995 by Senator Howell T. Heflin (D-AL.). It would sever the linkage between judges' salaries and the salaries of members of Congress and Executive Schedule personnel, and repeal section 140 of P.L. 97-92,

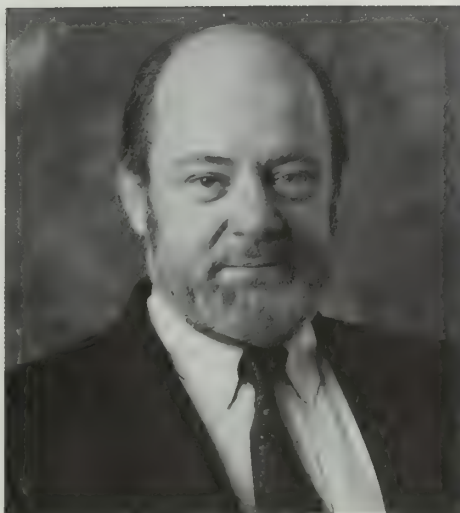
which provides that no salary increase shall be administered to judges in the absence of specific legislative action. In sum, this legislation would provide that judges' salaries would be adjusted automatically on an annual basis, assuming economic conditions so justified.

Shortly after Heflin introduced S. 1344, Representatives Roger F. Wicker (R-MS), Frederick K. Heineman (R-NC), and Eva M. Clayton (D-NC) sponsored similar legislation, H.R. 2701.

The Judiciary as well as the judges' associations strongly urged Congress to support S. 1344 and H.R. 2701. However, hearings were never held on the bills, and they failed to clear the respective Judiciary subcommittees. 

Associate Director Lee Elected NAPA Fellow

Clarence A. (Pete) Lee Jr., associate director for management and operations at the Administrative Office, has been elected to the National Academy of Public Administration (NAPA). Lee, who becomes one of 350 NAPA fellows, is responsible for coordinating support and management activities for the federal Judiciary. "Pete Lee has a wealth of experience and has distinguished himself over a 29-year career in public service in both the executive and judicial branches of federal government," said AO Director Leonidas Ralph Mecham, who is the only other NAPA fellow in the Judiciary. "I know he will be a valuable contributor to the academy's work."



NAPA is an independent, nonpartisan, nonprofit organization that assists federal, state, and local governments in improving their performance. Its members include current and former cabinet officers, members of Congress, governors, mayors, legislators, diplomats, jurists, business executives, public managers, and scholars.

Applicants Invited for 1997-98 Judicial Fellows Program

The Judicial Fellows Commission invites applications for the 1997-98 Judicial Fellows Program.

Up to four Fellows will be chosen to spend a year, beginning in late August or early September 1997, in Washington, D.C., at the Supreme Court, the Federal Judicial Center, the Administrative Office, or the U.S. Sentencing Commission.

Information about the Judicial Fellows Program and application procedure is available upon request from Vanessa M. Yarnall, Administrative Director, Judicial Fellows Program, Supreme Court of the United States, Room 5, Washington, D.C. 20543. Telephone: (202) 479-3415. The application deadline is November 15, 1996.

"Bar Association of the Federal Courts" Leader Looks Ahead

Marvin H. Morse is the immediate past president of the Federal Bar Association. He is an administrative law judge in the Executive Office of Immigration Review at the Department of Justice.

Q: The Federal Bar Association (FBA) calls itself the "bar association of the federal courts." How does this describe the mission of the FBA and its membership?

A: The FBA's constitution includes a mission statement, which is to advance the science of jurisprudence, and to promote the welfare, interests, education, professional growth and development of the members of the federal legal profession. This mission is accomplished through specified objectives, the first of which is to serve as the national representative of the federal legal profession.

The FBA, which celebrated its seventy-fifth anniversary last year, initially was comprised of only government lawyers and judges. We now consider the federal legal profession to include federal judges in all the branches, government lawyers and those who practice before and have an interest in the federal courts and agencies, and all lawyers involved in matters directly affected by what happens in the federal courts and agencies. FBA membership today is 84 percent private sector lawyers. The overwhelming bulk are in law firms, but we also have a healthy participation from the corporate and academic



communities.

FBA membership has for many years hovered at 15,000, making us the seventh largest voluntary bar association in the country. We have 80 active chapters in approximately 40 states, varying in size from a handful of members to the District of Columbia chapter's more than 2,000 members.

Q: The FBA has supported many Judiciary issues in the past, including delinking federal judges' pay from that of members of Congress. Why does the FBA see this as an important issue?

A: Traditionally, the FBA has been a strong voice in response to the needs of the federal Judiciary. We recognize that the Judiciary needs to be delinked from congressional pay and from subordination to the political climate year to year. Asking for a pay raise puts this independent branch of government into the position of the supplicant. I mention this with some sensitivity because my salary as a federal administrative law judge is linked to that of the legislative branch, but the

FBA has arrived at its important support for the Judiciary independent of that consideration.

Federal judges should not be obliged to ask for special consideration when, for whatever political reason, the Congress does not raise its own pay. There is a competitive market for lawyers' services and we've all seen experienced federal judges leave the bench for private practice, frequently for the reason that their family has been sacrificing. Federal judges are individuals who have made a public commitment and have the education and the experience that is certainly worth more than what they are paid.

Q: The FBA has also been in favor of legislation to increase the number of bankruptcy judges and Article III judges. How does this issue affect your membership?

A: The biggest single membership component of the FBA is our federal litigation section, the lawyers who are in the courts and in the agencies trying cases. We have sections across the many specialties such as the antitrust, bankruptcy, and immigration law sections. All these folks have an interest on behalf of their clients to see their cases move forward. And so does the public. Cases can't move without judicial resources.

We recognize that you can't keep increasing the size of the bench as more cases come in. You need other solutions. For example, we're very supportive of alternative dispute resolution. I was very impressed by a talk last month at our annual convention in Portland by the former chief judge of the Third Circuit, Ruggero J. Aldisert. He pointed out that the caseload of the courts of appeals has increased disproportionately and in substantially larger numbers than in the

district courts. I agree with him that the answer at the appellate level is not just to add more judges. In contrast, at the district court level, an increase in the number of judges seems to be absolutely essential.

With bankruptcy filings at an historic high, an increase in bankruptcy judgeships is necessary.

What's really involved here is how much the nation is willing to pay for due process. I don't believe there can be a principled objection to increasing the number of judges up to some reasonable point, from time to time.

Q: Would you like to describe any specific FBA-sponsored projects that have fostered positive relations with the courts?

A: In a number of districts we have had great success in sponsoring admission to practice exercises. Annually, for example, the Maryland chapter hosts a reception where the district court and fourth circuit law clerks are admitted to practice in federal court. I had the great privilege earlier this summer of participating with Judge Louis H. Pollak of the Eastern District of Pennsylvania who conducted, in conjunction with the FBA chapter, a swearing-in ceremony for admittees to that court.

In several districts, the FBA participates in developing bench books and local rules manuals for lawyers. As to ethics, civility, and professionalism, FBA leadership was instrumental in organizing the Federal American Inn of Court in the District of Columbia.

But the paramount issue is judicial independence. My President's Message in the June 1996 issue of the FBA magazine, *The Federal Lawyer*, responded to political rhetoric critical of a judge's specific decision and calling for the judge's impeachment or resignation.

An Article III judge's lifetime appointment is designed not for the benefit of the incumbent but to protect decision-making independence, so judicial decisions will not be susceptible to political winds of change. Hostility to judicial independence is a sad reflection on the lack of civic understanding of the role of the Judiciary.

I have suggested that each FBA chapter establish lawyers committees for effective assistance. Attacks on judges for unpopular decisions can be well intentioned. But if they are more than a criticism on the merits and impugn the integrity of the decision-maker, the organized bar should act decisively in response. After all, the courts are where the problems of our society

Administrative Office to confirm our willingness to become even more involved.

Q: In the budget battles last year, the FBA was outspoken in its support of the Judiciary's funding. What concerned you most about this funding impasse?

A: What concerned us was the threat to the ongoing efficiency and integrity of the courts and the executive branch. As the Judiciary was running out of money, the Chief Justice was rightly outspoken about the threat to court operations. The justice system in this country, now more than ever, needs support.


We recognize that the Judiciary needs to be delinked from congressional pay and from subordination to the political climate year to year.

are resolved, and the courts are not equipped to speak out on their own behalf. There's no higher calling for the organized bar than to represent the principle of judicial independence free from political interference.

Q: How would you characterize the FBA's relationship with the Judicial Conference?

A: The FBA and the Judicial Conference have evolved a close working relationship. Our Judiciary division, of which I am a former chair, is the principal focus for matters of concern to the Judiciary. But our greatest interaction is through the chapters, where we have the opportunity to work with district and circuit courts. Most recently, the FBA's immediate past president, the president-elect, and I met in July with the director of the

Q: With the conclusion of the FBA's recent annual meeting, do you see any changes in the direction of the FBA?

A: At our annual meeting, the FBA's National Council authorized an amendment to the constitution to establish a government relations committee, to be submitted to the membership at large. An initial issues agenda, consistent with policy positions already adopted by the FBA, was approved that includes advancing the support of the federal Judiciary. We also are funding a consultant to help us better identify and improve government relations. We're not going to take on solving the multibillion dollar deficit, but hopefully we can improve our efficiency in playing a role on issues of concern to the branches of government generally and on the Judiciary, specifically. 

JUDICIAL CONFERENCE OF THE UNITED STATES, September 17, 1996



Seated: (LtoR) Chief Judge Juan R. Torruella (1st Cir.); Chief Judge Jon O. Newman (2nd Cir.); Chief Judge Dolores K. Sloviter (3rd Cir.); Chief Judge J. Harvie Wilkinson III (4th Cir.); Chief Justice William H. Rehnquist; Chief Judge Henry A. Politz (5th Cir.); Chief Judge Gilbert S. Merritt (6th Cir.); Judge Joel M. Flaum (7th Cir.); Chief Judge Richard S. Arnold (8th Cir.).

Standing, Second Row: Chief Judge Joseph L. Tauro (D. Mass.); Judge W. Earl Britt (E.D. N.C.); Chief Judge Wm. Matthew Byrne, Jr. (C.D. Cal.); Chief Judge Glenn L. Archer, Jr. (Fed. Cir.); Chief Judge Procter R. Hug, Jr. (9th Cir.); Chief Judge Gerald B. Tjoflat (11th Cir.); Chief Judge Harry T. Edwards (D.C.Cir.); Chief Judge Sephanie K. Seymour (10th Cir.); Judge Donald E. O'Brien (N.D. Iowa); Judge Clarence A. Brimmer (D. Wyo.).

Standing, Third Row: Chief Judge William H. Barbour, Jr. (S. D. Miss.); Chief Judge Peter C. Dorsey (D. Conn.); Judge S. Arthur Spiegel (S.D. Ohio); Chief Judge Edward N. Cahn (E. D. Pa.); Chief Judge Michael M. Mihm (C.D. Ill.); Judge Wm. Terrell Hodges (M.D. Fla.); Chief Judge John G. Penn (D.D.C.); Chief Judge Dominick L. DiCarlo (Int'l Trade); Leonidas Ralph Mecham, Dir., AOUSC.

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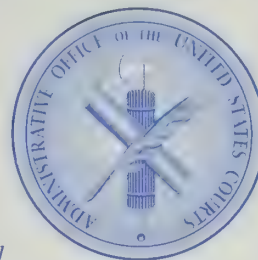
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Vol. 28
Number 11
November 1996

Legislation From Second Session of Congress Will Have Lasting Impact on Judiciary



The second session of the 104th Congress, which ended early last month, brought to a close a memorable and busy Congress, which began with the unfurling of the Contract with America and ended 32 days before the presidential election. While the number of days both houses were in session and the roll call votes tallied were fewer than in the first session, there was

much legislative activity of interest to the Judiciary. Topping the list was the Federal Courts Improvement Act of 1996, which was signed into law as P.L. 104-317 and will impact positively on court operations and administration. (See TTB, Oct. 1996.) This issue of *The Third Branch* highlights major bills that were considered and in many cases enacted into law during the second session, and

takes a look forward at some of the issues that may return to the legislative agenda when the 105th Congress convenes in January.

Antiterrorism and Effective Death Penalty Act

P.L. 104-132 was signed into law in April 1996. Its habeas corpus provisions significantly change procedures for state and federal prisoners, creating one-year deadlines for filing habeas petitions, limiting successive petitions, and restricting the review of state prisoner petitions if the claims were adjudicated on the merits in the state courts. The law establishes special habeas corpus procedures for capital cases that, among others, set a 180-day time frame for filing a habeas petition. (See TTB, May 1996.)

Other key provisions are

Mandatory Victim Restitution. This provision requires a federal court to impose restitution without consideration of the defendant's ability to pay, or the collection costs of the Department of Justice and the Judiciary. (See TTB December 1995.)

Closed Circuit Televised Proceedings for Victims of Crime. This provision requires a federal trial court, in any criminal trial where the

See *Congress* on page 2

INSIDE

Pace of Confirmations Slows	pg. 3
Smooth Moving Mail Saves Millions	pg. 7
Congress reduces courthouse funds	pg. 9

Congress continued from page 1

venue is changed out of the state in which the case was originally brought and more than 350 miles from the location in which those proceedings originally would have taken place, to order closed circuit televising of the proceedings to the original location, primarily to allow victims and certain other parties to view the trial proceedings. A sunset mechanism inactivates this provision should the Judicial Conference make or change rules allowing closed circuit televising of proceedings.

Criminal Alien Removal. This provision expanded the definition of an aggravated felony for which an alien may be deported, and streamlined deportation of criminal aliens after they serve their sentences.

Representation Fees in Criminal Cases. In capital cases, this provision caps fees for expert services, sets compensation for court-appointed attorneys, and makes public the amounts paid on behalf of indigent defendants to defense counsel and for expert and investigative services.

Alien Terrorist Removal Court. The court was created to conduct all proceedings, based on applications for removal brought by the Attorney General, to determine whether an alien should be removed from the United States on the grounds of being an alien terrorist. (See TTB, September 1996.)

Prison Litigation Reform Act

The Prison Litigation Reform Act was signed into law in April 1996 as part of the omnibus 1996 budget reconciliation legislation, P.L. 104-134. The prisoner amendments, among other changes, limit prospective relief in prison condition cases, require prisoners generally to pay a full filing fee, limit the filing of successive petitions in certain circumstances, restrict the entry of prisoner release orders, and make

prospective relief terminable in such cases, unless the court determines that the relief meets certain findings. The act also restricts the compensation of special masters and provides for the payment of special masters from appropriated funds. (See TTB, June 1996.)

The Line-Item Veto

P.L. 104-130, the Line-Item Veto Act, was signed into law in April 1996. The act gives the President line-item veto authority with respect to appropriations, new direct spending, and limited tax benefits. The law applies to discretionary funding, which encompasses the vast majority of the Judiciary's appropriations. Only the salaries of Article III judges and bankruptcy judges and retirement-related programs currently are classified as mandatory and would not be subject to a line-item veto. (See TTB, April 1996.)

Extension of the U.S. Parole Commission

The Parole Commission Phaseout Act of 1996, P.L. 104-232, extends the existence of the U.S. Parole Commission for five additional years until 2002. The Attorney General must annually certify to Congress that continuation of the commission is the most effective and cost-efficient manner for carrying out the commission's functions, or propose to Congress an alternative plan for a transfer of those functions. (See TTB, July 1996 and March 1996)

Sexual Misconduct: Federal Rules of Evidence

As part of P.L. 104-208, the omnibus appropriations bill of 1997, the Violent Crime Control and Law Enforcement Act of 1994 was amended to clarify the effective date of the new Federal Rules of Criminal Procedure 413, 414, and 415. These rules concern the admissibility of evidence in federal sex offense trials.

The amendment provides that evidence of a defendant's prior sexual assaults is admissible in all federal sex offense trials conducted after the effective date (including cases that were indicted before the effective date) established in the 1994 act.

Jury and Witness Tampering

P.L. 104-214 increases the penalties for jury or witness tampering and for retaliation against a trial witness. The new language makes the maximum prison term either the current 10 years or the maximum term meted out in the case in which the jury tampering or witness retaliation occurred, whichever is higher.

Interstate Stalking

As part of the Department of Defense appropriations bill, P.L. 104-201, Congress made stalking a federal crime if the offender crosses state lines to stalk someone. The bill also made stalking restraining orders issued in any state valid in all jurisdictions.

Child Pornography

As part of the omnibus appropriations bill, P.L. 104-208, Congress established a specific statutory definition of child pornography. Under this section, any visual depiction, produced by any means, including electronically by computer, of sexually explicit conduct will be classified as child pornography if (a) its production involved the use of a minor engaging in sexually explicit conduct; (b) it depicts, or appears to depict, a minor engaging in sexually explicit conduct; (c) it has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or (d) it is promoted or advertised as depicting a minor engaging in sexually explicit conduct. It increases the penalties for child sexual exploitation, child sexual abuse, and

child pornography offenses, particularly for repeat offenders.

This section also protects federal, state, and local governments, and state and local law enforcement officials from the threat of civil lawsuits and the awarding of damages as the result of searches and seizures made in connection with child pornography investigations or prosecutions.

Illegal Immigration Reform

As part of the omnibus appropriations bill of 1997, P.L. 104-208, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Act includes numerous changes designed to curb illegal immigration, including expanded authority of federal courts to order deportation of criminal aliens; authorization to hire hundreds of new border patrol agents, which could increase the number of criminal immigration cases brought into federal courts; increased penalties for alien smuggling and fraudulent use of government-issued documents; and new penalties for the preparation of false documents and for false claim to U.S. citizenship.

Cuban Liberty and Democratic Solidarity Act

P.L. 104-114 creates a civil cause of action in federal court and provides that any person who knowingly and intentionally "traffics" in property that has been confiscated by the Cuban government shall be liable to the U.S. national who owns the claim to such property. (See TTB, March 1996.)


These May Return in the 105th

Some legislation continued to move through Congress right up to the final hours, but then failed to pass as either separate bills or as provisions of larger omnibus bills. Whether held in committee or languishing on the House or Senate

Pace of Confirmations Slows in Second Session

During the second session of the 104th Congress there were 17 judges confirmed, bringing the total appointed by President Clinton to 204. When Congress adjourned sine die there were seven nominees who had been reported out by the Senate Judiciary Committee and were awaiting floor action; six nominees who had hearings and were awaiting a committee vote; and 15 nominees who had not had a hearing.

The 104th Congress failed to act on the Judicial Conference's request for new judgeships. The Conference has transmitted a draft bill that would create 20 new temporary judgeships for the courts of appeals and 18 permanent and five temporary judgeships for the district courts. The Conference also has asked Congress to convert five existing temporary judgeships to permanent status and to extend the expiration date for six temporary judgeships for years beyond the current expiration date.

H.R. 2604, a bill that would create 11 new bankruptcy judgeships, was introduced in the House and voted out of the House Judiciary Committee. The legislation did not pass the full House or Senate due to concern over the use and allocation of current judicial resources. Chief Judge Paul A. Magnuson (D. MN), chair of the Committee on the Administration of the Bankruptcy System, testified on behalf of the Conference at House and Senate hearings on the bill. 

floor without a vote, the following bills were of sufficiently widespread interest to indicate they may return in the 105th Congress—although with different names, bill numbers, and perhaps, sponsors.

Judicial Compensation

The 104th Congress failed to produce an Employment Cost Index (ECI) adjustment for judges, as well as members of Congress and top executive and judicial branch officials. Section 637 of H.R. 3610, the Department of Defense Appropriations Act of 1997, contains a provision that denies top government officials the 2.3 percent ECI due to rank-and-file government employees. The Federal Courts Improvement Act, S. 1887, as approved by the Senate Judiciary Committee, contained a provision to repeal section 140 of P.L. 97-92. Although the House version of the bill did not contain the same provision,

it was expected that it would be accepted by conferees. When the bill experienced a series of delays and holds during the last two weeks of the session, the House passed its version of the bill and a conference never occurred.

Public Buildings/Courthouses

The Senate passed S. 1005, the Public Buildings Reform Act of 1996. The chairman of the House Public Buildings Subcommittee announced his intention to introduce his own version of this bill, but Congress adjourned before the bill was introduced. The Senate bill would have required the General Services Administration to prioritize public building projects in three-year periods and develop design guidelines and standards for federal courts. (See TTB, June 1996.) A House bill is expected to require a prioritized list

See Congress on page 4

Congress continued from page 3
of courthouse projects, courtroom use studies with each project request, notification of Congress when deviations from design standards occur, and a policy for sharing of courtrooms, particularly by senior judges.

H.R. 3586: Veterans' Employment Opportunities Act of 1996

The bill was passed by the House and went to the Senate where no action was taken. The bill would have extended veterans' preference to appointments and reductions in force to the Judiciary. Judicial officers are excepted, as are law clerks, or secretaries to a justice or judge, or appointees to positions equivalent to those of Senior Executive Service positions. In addition, H.R. 3586 would have required the Judicial Confer-

ence to prescribe procedures for alleged violations of the rights.

Ninth Circuit Split

S. 853, the Ninth Circuit Court of Appeals Reorganization Act of 1995 was introduced in the Senate and hearings were held in December 1995. The bill would have divided the Ninth Circuit into the Ninth and Twelfth Circuits. A companion bill also was introduced in the House, but the House took no action. The Senate subsequently passed S. 956, which would have created the Commission on Structural Alternatives for the Federal Courts of Appeals. A similar provision was included in the Commerce, State, Justice, and the Judiciary appropriations bill. Although funds were authorized for creation of the commission, the pro-

vision creating the commission was dropped before passage of the legislation as part of P.L. 104-208. (See TTB, October 1995.)

Victims Rights Constitutional Amendment

House and Senate committees considered a proposed amendment to the Constitution establishing rights for crime victims. The Senate Judiciary Committee held hearings on S.J. Res. 52, and the House Judiciary Committee held hearings on the companion resolutions, H.J. Res. 173 and H.J. Res. 174. Among the proposed rights were the right to notice of public proceedings relating to the crime and the right to an opportunity to be heard at proceedings. The rights would apply in the federal and state systems throughout the criminal, military, and juvenile justice processes. Although the Judicial Conference has taken no position, in a letter sent to members of the Senate and House Judiciary committees, Judge Maryanne Trump Barry (D. N.J.) urged a "careful review" of the proposed constitutional amendment, because it would represent a significant change in the criminal justice system. The proposal for a constitutional amendment establishing victims' rights has bipartisan support in Congress and has been endorsed by the Clinton Administration. (See TTB, August 1996.)

Pension Forfeiture Act

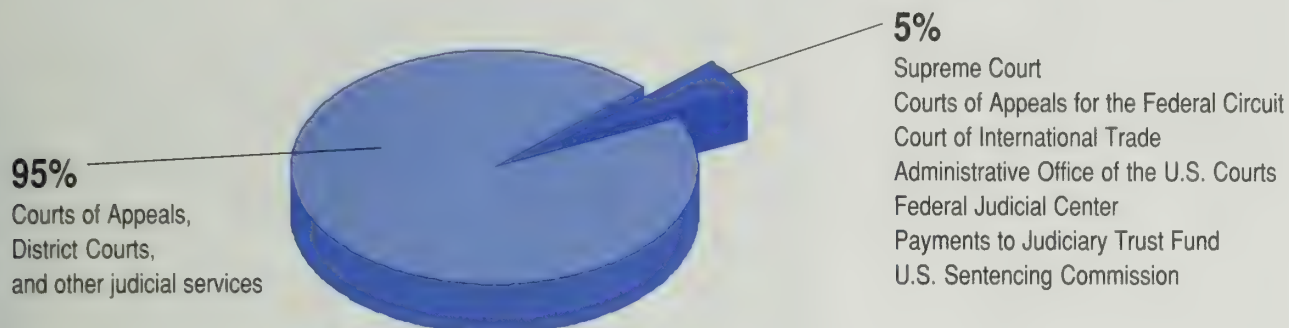
S. 1794, the Congressional, Presidential, and Judicial Pension Forfeiture Act, would have provided that specified federal employees, including Supreme Court justices and federal judges, who have been convicted of certain offenses such as fraud and bribery, be prohibited from receiving any government service related retirement annuity or pay. In Senate hearings on the bill, Judge S. Jay Plager (Fed. Cir.) testified on behalf of the Judicial Conference. The House took no action.

**Average Time Required to Fill Circuit and District Judgeships
(January 1, 1979-October 4, 1996)**

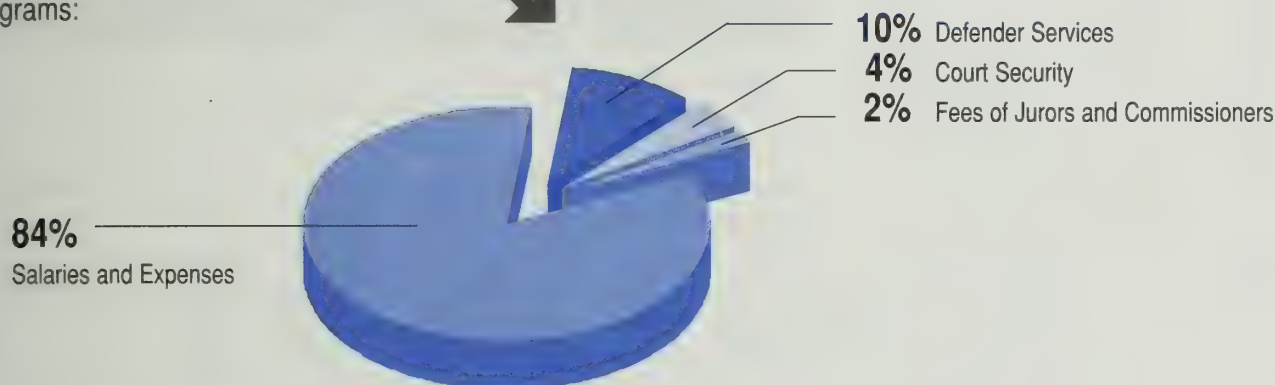
Year	Number of Judges Appointed	Average Number of Days to Fill Vacancy
1979	135	292
1980	64	424
1981	41	469
1982	47	342
1983	32	315
1984	43	199
1985	84	366
1986	44	409
1987	43	428
1988	41	424
1989	15	742
1990	55	443
1991	56	368
1992	66	505
1993	28	804
1994	101	777
1995	55	570
1996	20	483
Average Per Year	54	464

Allocating FY 1997 Judiciary Resources

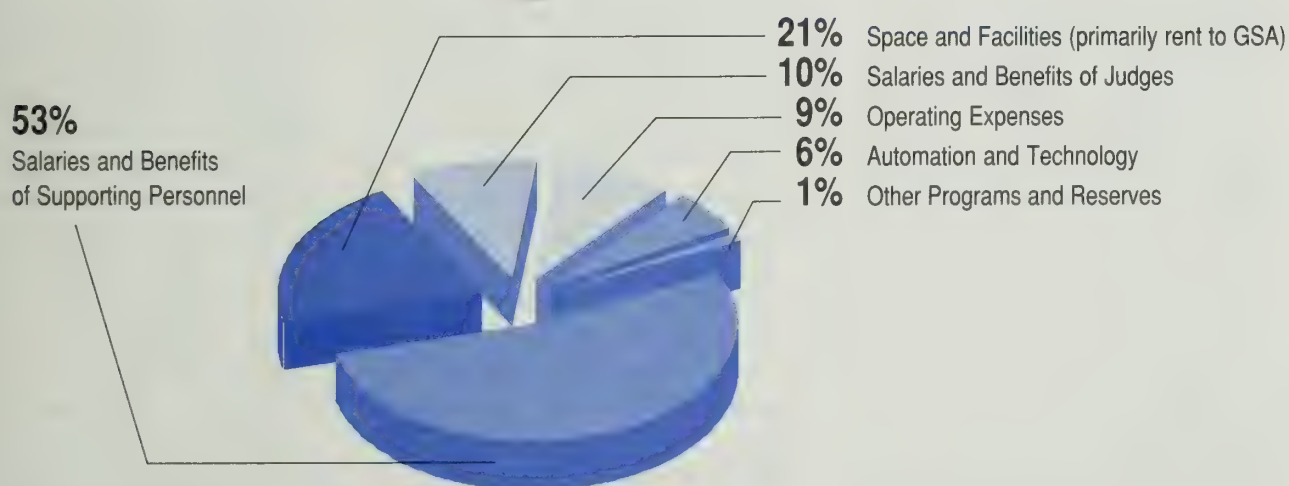
The Judiciary's resources for fiscal year 1997 are allocated to eight major areas, with the bulk supporting the courts of appeals and district courts.



Resources allocated to the courts are broken down into support for specific programs:



The money allocated to Salaries and Expenses is further divided with the largest percentage going to salaries and benefits of supporting court personnel.



Special Railroad Court to Close Doors

With President Clinton's signing of P.L. 104-317, the Federal Courts Improvement Act, the courts gained substantive benefits in administrative, financial, jurisdictional, and personnel management. But, as part of that act, 90 days after the signing of the bill, the federal Judiciary will no longer include the Special Court formed under the Regional Rail Reorganization Act of 1973.

In March 1996, the Judicial Conference adopted a recommendation from its Committee on Federal-State Jurisdiction that the special court be dissolved and the court's jurisdiction transferred to the U.S. District Court for the District of Columbia. The recently signed Federal Courts Improvement Act carries out that recommendation.

Said Federal-State Jurisdiction Committee Chair Judge Stephen H. Anderson (10th Cir.), "During the past decade, the court's workload has declined significantly, and its docket now consists of less than 10 cases. The history of the court has been one of unparalleled dedication by the judges charged with administering its jurisdiction. All in the Judiciary recognize this significant contribution. The committee believes that a separate court in this area is neither necessary nor cost-effective, particularly in light of the current budgetary climate. Nevertheless, the special court's judges should be commended for their stewardship in this difficult legal area."

Clerk of Court Nancy Mayer-Whittington (D. D.C.) foresees an easy transition. "I'm also clerk for the special court," said Mayer-Whittington, "and the records are already here at the court. The special court will meet in a few weeks to discuss the transition, but I




Senior Judge John Minor Wisdom (5th Cir.) has served since 1986 as presiding judge of the Special Court formed under the Regional Rail Reorganization Act of 1973.

don't anticipate a significant change in the way we handle cases."

The special court was established by Congress to oversee the reorganization of eight major Northeast and Midwest railroads filing for bankruptcy. During the mid-1970s, Judge John Minor Wisdom (5th Cir.) was chair of the Judicial Panel on Multi-District Litigation, which was statutorily charged with the selection of judges for the court. The special court's first chief judge was Judge Henry Jacob Friendly (2nd Cir.), whom Wisdom described as "a man many people considered to be one of the most outstanding judges in the U.S." In 1975, Wisdom was designated a member of the special court and, after Friendly stepped down in 1986, he became the court's presiding judge. "At the time there was genuine concern about how badly the railroads were doing," said Wisdom. "There were some extremely complicated cases, some constitutional cases, and questions of interpreting the law.

Our court's prime contribution was to interpret the law in the interest of establishing a federal jurisdiction."

The court had powers to approve a new rail system plan, review and approve property conveyances, determine appropriate compensation, and make other consequential findings and determinations. Originally composed of three judges drawn from other Article III courts, the court expanded to six judges during the 1980s. Its jurisdiction also expanded at that time to include a subsequent rail reorganization and the privatization of the Consolidated Rail Corporation (Conrail). In addition to Judge Wisdom, the court presently consists of three other members: Judges William B. Bryant (D. D.C.); June L. Green (D. D.C.); and Charles R. Weiner (E.D. Pa.).

The last court that was abolished was the Temporary Emergency Court of Appeals, which also was created in the 1970s. It was phased out by the Federal Courts Administration Act of 1992. 

NOVEMBER

24-25 Sunday-Monday
Committee to Review Circuit Council Conduct and Disability
Orders

DECEMBER

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 28 Number 11 November 1996

4-5 Wednesday-Thursday
Committee on Judicial Resources

5-6 Thursday-Friday
Committee on Administration of the Magistrate Judges System

5-6 Thursday-Friday
Committee on the Administrative Office

5-7 Thursday-Saturday
Committee on Defender Services

9-10 Tuesday-Wednesday
Committee on Criminal Law

9-11 Tuesday-Thursday
Committee on Court Administration and Case Management

9-13 Tuesday-Saturday
Video Orientation for Newly Appointed District Judges

17-19 Wednesday-Friday
Committee on Automation and Technology

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH

Vol. 28 Number 11 November 1996

CLERK OF COURT, Southern District of Illinois

The court, headquartered in East St. Louis with a divisional office in Benton, Illinois, seeks an experienced administrator for the position of Clerk of Court. Applicants must have a minimum of 10 years of administrative and management experience of increasing responsibility. Substantial experience in personnel and budget management, and experience with automation systems and technology are required. Applicants must have a bachelor or higher degree, and a professional degree in law, business administration, or public administration is desirable. Salary: \$85,114-\$110,646. An original and two copies of a letter of application and resume must be sent to Stuart J. O'Hare, Clerk of Court, 750 Missouri Avenue, East St. Louis, IL 62202. Closing date is **December 2, 1996**.

MAGISTRATE JUDGE, Eastern District of California

Qualified applicants are being sought for a Magistrate Judge position in Sacramento, California. Salary: \$122,912. Term of office is eight years. A full public notice for the position is posted in the Office of the Clerk of the U.S. District Court at 650 Capitol Mall, Room 2546, Sacramento, California, and 1130 "O" Street, Fresno, California. Interested parties may contact the Clerk for additional information and application forms. Applications must be submitted by potential nominees personally and must be received by the Clerk in Sacramento no later than **January 17, 1997**.

CHIEF DEPUTY CLERK, District of Hawaii

Applications are being sought for a Chief Deputy Clerk in Honolulu, Hawaii. Applicants must have a minimum of three years of progressively responsible administrative experience, including at least three years in a position of substantial management responsibility. A bachelor's degree is required, and a graduate degree in public administration, business, judicial administration, or law is preferred. Salary: JSP 14-15 (\$58,915-\$90,090), plus 22.5 percent COLA. Please submit resume, OF 612 form, letter of interest, and references to U.S. District Court, Box 50129, Honolulu, HI 96850, Attn: Selection Committee. Deadline is **January 31, 1997**.

CHIEF PROBATION OFFICER, Eastern District of Louisiana

The position is headquartered in New Orleans, with divisional offices in Hammond and Houma. Information can be obtained by calling (504) 589-7503, or send a letter of application and resume to Warren A. Cuntz, Jr., Administrative Assistant to the Chief Judge, 500 Camp Street, Room C256, New Orleans, Louisiana 70130. Application deadline is **January 31, 1997**.

CHIEF PROBATION OFFICER, Eastern District of New York

Qualified applicants are being sought for a Chief Probation Officer position. The Probation Office is headquartered in Brooklyn, with divisional offices in Uniondale, Hempstead, and Hauppauge. A 4-year degree from an accredited college or university with specialization in one or more of the social sciences appropriate to the position is required. An advanced degree or pretrial programs also is required. Progressively responsible experience in investigation, supervision, counseling, and guidance of offenders in community corrections or pretrial programs also is required. Salary: JSP 14-18 (\$63,658-\$116,910). Submit a letter of application and resume to James E. Ward, Jr., District Executive, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201. Phone: (718) 260-2260. **Open until filled.**

Smooth Moving Mail Saves Millions

By the end of 1996 nearly all federal bankruptcy courts will be using a contractor for a seemingly routine yet Herculean task—the printing and mailing of millions of bankruptcy notices a month. The result will be a savings of about \$11 million over a four-year period.

“Moving mail, particularly important mail such as this, has challenged many in the public and private sectors for years,” said Leonidas Ralph Mecham, Director of the Administrative Office. “I’m pleased that the Judiciary has identified a creative, effective, and efficient solution that will save millions of dollars.”

Today, the Bankruptcy Noticing Center (BNC) provides centralized notice production and distribution services to 69 of the 90 U.S. bankruptcy courts—a function most courts once performed in-house. It is projected that more than 50 million notices will be sent in fiscal year 1997. A number of different types of bankruptcy notices are distributed. For example, notices are sent to creditors advising that a bankruptcy has been filed and that they can no longer pursue debt collection without court approval. Another example is a notice that advises creditors that a debt is no longer legally owed. A private contractor now prints these notices. The contract for noticing services was awarded in June 1993. By the end of 1996, all but eight bankruptcy courts will participate.

Savings are realized almost everywhere along the postal path, from envelopes and supplies to the addressing that allows notices to be returned directly to the debtor or debtor’s attorney, instead of to the court. This approach to addressing not only saves the courts tremendous

handling time and related costs, including remailing returned notices to debtors. Centralized noticing also allows batching and sorting for maximum postal discounts.


Bankruptcy Clerk Karen Eddy (S.D. Fla.), calls the BNC “possibly the most successful out-sourcing project in the Judiciary.” Bankruptcy Clerk Carol Ann Robinson (E.D. Mo.) is no less enthusiastic. “The BNC is heaven,” she said, “Who wants to print forms, fold notices, then sit and slap labels on envelopes? The BNC works. And it’s cost-effective.”

With the noticing moving out of the courts to a contractor, over 75 court support staff positions nationwide have been saved. Says Eddy, “In our court, the staff dedicated to bankruptcy noticing went from nine to three people, and I’ll soon be able to take those three people off noticing and utilize them in areas where I need particular help.”

Quality also improves since the contractor is able to maintain state-of-the-art printing, production, and mailing facilities. Meanwhile, bankruptcy courts no longer need to budget for mail handling equipment and, as a consequence, this account has been phased out for fiscal year 1997. Utilities and office space consumed by supplies also are reduced with the elimination of large court-based mailroom operations.


And while saving money is a benefit, doing the job right, especially in the area of bankruptcy court noticing, remains a priority. The BNC contractor is required to download information daily from the courts for use in notices, provide confirmation of retrieval, mail all notices within two calendar days of retrieval of the data, and provide court copies, certificates of service, and a daily summary of notice activity to the court by noon the next business day after service is executed. The court copies already are

stapled, two-hole punched, and sorted in the order specified by the court.

The number of bankruptcy petitions filed has topped the one million mark for the first time in the history of the U.S. courts. For the 12-month period ending June 30, 1996, there were 1,042,110 bankruptcy petitions filed. This figure is more than double the number registered a decade ago. 

Director's Awards Nominations Open

Nominations for the 1997 Director's Awards for Administrative Excellence and Outstanding Leadership are now being accepted. The Director's Award for Administrative Excellence honors employees for outstanding achievements in improving the administration of the federal Judiciary. The Director's Award for Outstanding Leadership recognizes managerial employees who have made long-term contributions to increase managerial effectiveness and who have developed improvements in the administration of the federal Judiciary. Nomination forms will be sent to all Payroll Certifying Officers for distribution to employees. Nominations should be sent to John J. Fitzgerald, AO Human Resources Division, by January 13, 1997.

Receiving the 1996 Director's Award for Administrative Excellence were Leah Arms (Bankr. W.D. Okla.), Jon D. Ceretto (Bankr. C.D. Calif.), and George A. Ray (N.D. N.Y.). The 1996 recipients of the Director's Award for Outstanding Leadership were Terence H. Dunn (Bankr. D. Or.), Geri Smith (N.D. Ohio), Robert M. Wily (Bankr. W.D. Va.), and Jill Sayenga (D.C. Cir.). A special Director's Award was given to Robert D. Dennis (W.D. Okla.). 

JUDICIAL MILESTONES

Appointed: Theresa Carroll Buchanan, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Virginia, September 12.

Appointed: Patricia Coan, as U.S. Magistrate Judge, U.S. District Court for the District of Colorado, October 15.

Appointed: Judge Joseph A. Greenaway Jr., as U.S. District Judge, U.S. District Court for the District of New Jersey, September 20.

Appointed: Judge Timothy S. Hogan, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Ohio, October 4.

Appointed: Walker D. Miller, as U.S. District Judge, U.S. District Court for the District of Colorado, October 10.

Elevated: Judge Terry C. Kern, to Chief Judge, U.S. District Court for the Northern District of Oklahoma, succeeding Chief Judge Thomas R. Brett, October 4.

Elevated: Judge Walter Herbert Rice, to Chief Judge, U.S. District Court for the Southern District of Ohio, succeeding Chief Judge John David Holschuh, October 13.

Elevated: Bankruptcy Judge James E. Shapiro, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of Wisconsin, succeeding Chief Bankruptcy Judge Charles N. Clevert, Jr., September 18.

Senior Status: Judge Sam H. Bell, U.S. District Court for the Northern District of Ohio, October 30.

Senior Status: Chief Judge Thomas R. Brett, U.S. District Judge for the Northern District of Oklahoma, October 3.

Senior Status: Chief Judge John David Holschuh, U.S. District Court for the Southern District of Ohio, October 12.

Senior Status: Alex T. Howard Jr., U.S. District Court for the Southern District of Alabama, October 21.

Senior Status: Judge William C. O'Kelley, U.S. District Court for the Northern District of Georgia, October 1.

Deceased: Judge James F. Battin, U.S. District Court for the District of Montana, September 27.

Deceased: Judge Richard A. Gadbois Jr., U.S. District Court for the Central District of California, October 2.

Change of Date for Conference. . . Due to a conflict with the Supreme Court's argument schedule, the dates for the spring meeting of the Judicial Conference of the United States have been changed to March 11-12, 1997. Please be sure to note this on your meeting calendars.

THE THIRD BRANCH

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Please direct all inquiries and address changes to *The Third Branch* at the above address.

JUDICIAL BOXSCORE

As of November 1, 1996

Courts of Appeals	
Vacancies	19
Nominees	0
District Courts	
Vacancies	49
Nominees	0
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	22

Congress Reduces Courthouse Funding


Funding for 16 courthouses was included in one of the last measures passed by the 104th Congress, the Omnibus Consolidated Appropriations Act for fiscal year 1997 (P.L. 104-208). More courthouse projects were funded than anticipated by the Judicial Conference's five-year plan, which listed five projects for consideration in FY 97. Congress funded those five courthouses and added another 10 from the FY 98 list, following the priority order set by the Judiciary, but skipping several projects not yet ready to move forward. Additional funding also was provided for a project in Montgomery, Alabama. (See map.)

Unfortunately, the funding for the eight courthouses ready for construction was reduced by 10 percent and the seven projects at the site and

design stage had their money cut by approximately 3 percent. The conferees on the General Services Administration (GSA) FY 97 appropriations bill expressed their concern that "courthouse facilities are not designed and built to achieve maximum efficiencies and cost savings." They also stated that the process used by the GSA to acquire sites "almost certainly undermines the ability of the GSA to negotiate a lower price."

Administrative Office Director Leonidas Ralph Mecham responded to the cuts. "Both we and GSA tried to convince the Appropriations Committees that failure to fully fund these projects at the construction phase could add cost and delay to the projects until additional funds were provided," said Mecham. "And redesigning these projects to suit lower funding levels would also add to costs." The GSA is looking at possible options, but it is uncertain at this point how the 10 percent cut

will affect courthouse construction or whether the shortfall in acquisition money will jeopardize the planned site purchase.

Before appropriated funds can be spent, courthouse projects also require authorizing resolutions by both the Senate Environment and Public Works Committee and the House Transportation and Infrastructure Committee. While the Senate committee authorized all of the projects requested, except for a federal courthouse in Orlando, Florida, the House committee deferred authorization for designs of any new courthouses until the Judiciary "produced changes in the [U.S. Courts] Design Guide that provide for more modest projects and provide for courtroom sharing." The Judicial Conference is expected to consider revisions to the design guide at its March meeting and House committee members have indicated they will reexamine the design authorizations following any changes. 

Fiscal Year 1997 Funded Courthouse Projects



A View of the Magistrate Judges System

Judge Philip M. Pro was appointed to the District Court for the District of Nevada in 1987. Prior to that he served as a magistrate judge. He is chair of the Judicial Conference's Committee on the Administration of the Magistrate Judges System.

Q: As chair of the Judicial Conference Committee on the Administration of the Magistrate Judges System, what do you view as the committee's objectives?

A: The primary objective of the Magistrate Judges Committee is to discharge as effectively as possible the responsibilities given us by the Judicial Conference to oversee the operation and development of the magistrate judges system.

Twice a year our committee meets and considers requests from various districts for the establishment of new magistrate judge positions or changes in existing magistrate judge positions and makes appropriate recommendations to the Judicial Conference for final action. Our committee also considers a wide range of policy issues relating to the operation of the magistrate judges system including the selection and appointment procedures for magistrate judges, the jurisdiction and utilization of magistrate judges, and matters such as salaries, retirement benefits, and staff and support services for magistrate judges. Because our committee is comprised of circuit and district judges from

each circuit, as well as three at-large magistrate judges, we also operate as a liaison with the various districts and circuits to consider proposals for the improvement of the magistrate judges system.

Q: How many magistrate judges are there in the judicial system, and, generally, how do district courts use their services?

A: As of September 1996, the Judicial Conference has authorized 422 full-time positions, 77 part-time positions, and 3 combination clerk/magistrate judge positions nationwide. In addition, 15 retired magistrate judges are serving on a recalled basis. This is a far cry from the 61 full-time and 449 part-time magistrate judge positions originally authorized by the Judicial Conference in 1970.

I think anyone who serves on our committee is immediately struck by the array of duties performed by magistrate judges and the different ways in which they are utilized in districts throughout the country. The magistrate judges system is inherently flexible, designed to address needs that are common to every district court, while at the same time maintaining the ability to meet different and sometimes unique needs that exist in various districts. As a result, the utilization of magistrate judges varies from district to district in response to local conditions and changing caseloads.

Virtually all magistrate judges conduct preliminary proceedings in felony cases and try misdemeanor and petty offense cases. In some courts, magistrate judges are also referred pretrial duties in felony cases, including non-dispositive and case-dispositive motions and pretrial conferences. With respect to civil cases, magistrate judges conduct almost all pretrial proceed-

ings in some courts, preparing the case for trial before the assigned district judge. In other courts, magistrate judges are assigned duties in civil cases on a selected basis in accordance with the preferences of the assigning district judge. In many courts, prisoner cases are routinely referred to magistrate judges for pretrial management and the preparation of reports and recommendations. Magistrate judges also are heavily involved in conducting settlement conferences in civil cases in many districts.

I think one of the most important developments within the magistrate judges system in recent years has been the growth of the number of civil cases tried or otherwise disposed of by magistrate judges with the consent of the parties under 28 U.S.C. § 636(c). Finally, the involvement of magistrate judges in the area of court governance is increasing. Magistrate judges currently serve on many of the committees of the Judicial Conference as well as various circuit committees. In many districts, magistrate judges also play a substantial role in local court administration, which I think is a healthy development.

Q: How are magistrate judge positions authorized?

A: Magistrate judge positions are authorized by the Judicial Conference upon the recommendation of the Magistrate Judges Committee and are subject to subsequent funding by Congress through the appropriation process. In determining the number, location, and salaries of magistrate judge positions, our committee considers the recommendations of the appointing district court, the relevant judicial council of the circuit, and the Administrative Office. The committee reviews the continuing

eed for existing magistrate judge positions in each district every four or five years, and responds to requests for additional magistrate judge positions received from the district courts.

In evaluating a request for a new full-time magistrate judge position, the committee principally directs its attention to three criteria: the caseload of the district court as a whole and the comparative need of the district judges for additional assistance from magistrate judges; the effectiveness of the existing magistrate judges system in the district and the commitment of the court to the effective use of magistrate judges; and the sufficiency of judicial business of the sort that the district judges intend to assign to magistrate judges to warrant the addition of a full-time position. The committee also gives consideration to other pertinent factors that may be presented in a particular situation.

Q: The 1996 Federal Courts Improvement Act contains a number of provisions affecting magistrate judges. What are these provisions, and why are they needed?

A: I think one of the most significant changes is that magistrate judges will now be able to try certain classes of petty offense cases without the consent of the defendant. Under prior law, defendants charged with petty offenses could elect to be tried by an Article III judge. Trial by a magistrate judge could only occur when the defendant filed a written consent to the dispositive authority of a magistrate judge. The new law eliminates the consent requirement in class B misdemeanors charging a motor vehicle offense, class C misdemeanors, and infractions. In addition, in all other misdemeanor and petty



Judge Philip M. Pro

offense cases, the consent of the defendant may now be expressed in writing or orally on the record.


Additionally, magistrate judges temporarily assigned to another judicial district because of an emergency are now authorized to dispose of civil consent cases with the consent of the parties. This technical correction was necessary because of the failure to amend 28 U.S.C. § 636(f) (the emergency assignment provision) when the civil consent provisions were enacted in 1979. I think this change is particularly important given the potential for the inter-district assignment of magistrate judges.

Two other provisions in the Federal Courts Improvement Act were recommended in the Long Range Plan for the Federal Courts. First, where parties to a civil action have consented to the case-dispositive authority of a magistrate judge, prior law would have permitted an appeal of the judgment to either the court of appeals or to a district judge. Experience showed that the appeal route to a district judge was very rarely invoked and, in fact, was discouraged in most cases. The Federal Courts Improvement act eliminates the alternative route of appeal to a district judge in civil consent cases. Second, the act

expanded the statutory membership of the Board of the Federal Judicial Center to include a magistrate judge.

Q: The magistrate judges system is nearly 30 years old. Have the original intentions of the legislation been reached?

A: I think the evolution of the magistrate judges system over the past 30 years is one of the great success stories of the federal judiciary. The Federal Magistrates Act of 1968 created a new type of judicial officer to replace the 175-year-old U.S. commissioner system which had been limited basically to conducting preliminary proceedings in criminal cases and trying petty offenses. The magistrate judges system was intended to increase the overall efficiency of the federal judiciary by relieving the district judges of some of their caseload burdens in civil and criminal cases, and to provide a high standard of justice at the point where many individuals first come into contact with the courts. I think the magistrate judges system has done that and will continue to do so.


District judges have come to rely heavily on magistrate judges for assistance in managing their civil and criminal caseloads and for assisting in other phases of court administration. I think this is entirely understandable given the flexibility of the magistrate judges system to meet the needs of the individual districts and also because it is the district judges who select people of such quality to occupy the position of magistrate judge. Indeed, the credit for the development of the magistrate judges system over the past 30 years must go principally to the judges throughout the country whose efforts to utilize magistrate judges effectively has helped the Judiciary meet its responsibilities. 

Tjoflat Receives Fordham-Stein Award

Judge Gerald B. Tjoflat (11th Cir.) was the recipient of the 21st annual Fordham-Stein Prize at ceremonies last month. Justice Byron R. White presented the prize, a Tiffany sculpture. The Fordham University Law School annually gives the prize to a member of the legal profession whose work exemplifies the highest standards of professional conduct, promotes the advancement of justice, and brings credit to the profession by emphasizing in the public mind the contribution of lawyers to society and to the democratic system.

In supporting his nomination for the award, Tjoflat's fellow judges on the 11th Circuit wrote, "His energy and devotion to the realization of the rule of law through the administration of justice and through leadership in his community are

demonstrated in his work as a lawyer, judge, and judicial administrator. . . . When Judge Tjoflat became Chief Judge of the 11th Circuit, [he] proved to be one of the rare individuals who could lead a federal circuit through sheer force of untiring energy, engaging personality, and powerful intellect. . . . Even in a group as diverse (and independently-minded) as the 11th circuit, [he] is universally revered as an outstanding example of all that a chief judge should be."

Past recipients of the prize include U.S. Supreme Court Justice Sandra Day O'Connor, former Chief Justice Warren Burger, Secretary of State Warren Christopher, former U.S. Attorney General Edward Levi, former U.S. Solicitor General Archibald Cox, and former presidential counsel, Lloyd Cutler. 



Judge Gerald Bard Tjoflat (11th Cir.)

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Federal Courthouses Receive Design Honors



Howard H. Baker, Jr., U.S. Courthouse, Knoxville, Tennessee.
Photo credit: Hansen Lind Meyer Inc.)

Several federal courthouses across the country recently were recognized in nationwide competitions for their excellence in architecture, a category that takes into account not only design, but also suitability of the design to the building's function.

American Institute of Architects Awards

The federal courthouse in Montgomery, Alabama, and the Howard H. Baker, Jr., U.S. Courthouse in Knoxville, Tennessee, have received 1997 Citation Awards from the American Institute of Architects (AIA) Committee on Architecture for Justice. In a juried evaluation of projects nationwide submitted for the *Justice Facilities Review 1997*, only four projects of a field of 49 received the citations. The review, published annually by AIA since 1976,

See Courthouses on page 2

INSIDE

Judiciary Submits Utilization Report to Congress	pg. 4
Pretrial Services 20 Years Later	pg. 5
Salaries Remain Frozen for Senior Executives	pg. 7

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Number 12

December 1996

New Congressional Committee Line-ups Take Shape

The relatively low turnover in November's congressional elections means that most committee chairs will remain in place during the upcoming 105th Congress. Although the actual selection will not become formal until the new Congress convenes on January 7, there are a few expected changes in both houses that are of interest to the Judiciary. In addition, a few committee leadership posts remain undecided.

Senator Orrin G. Hatch (R-UT) will continue as chair of the Judiciary Committee, but Senator Joseph R. Biden, Jr. (D-DE), will turn over his seat as ranking member to Senator Patrick J. Leahy (D-VT). Biden, who chaired the panel for eight years before the Republicans took control in 1995, will become the ranking Democrat on the Foreign Relations Committee. Biden and Leahy reportedly have agreed that Biden, who will continue to serve on the Judiciary Committee, will occupy the Democrat's lead role on crime and drug issues.

See Committees on page 2

Courthouses continued from page 1

showcases the state of the art in prisons, jails, courts, and law-enforcement facilities. Jury members included professionals in the fields of corrections and architecture, and Judge Michael S. Kanne (7th Cir.).

AIA recognized the projects "not only for their superior functional planning, but because they are examples of good architecture: program, concept, treatment of materials, and a sensitive relationship to their surroundings." The awards jury also noted that as a group, "the courts projects displayed the highest degree of quality architecture, with several emphasizing the historical and symbolic nature of court facilities."

**Howard H. Baker, Jr., U.S. Courthouse
Knoxville, Tennessee**

This major renovation successfully incorporated executive agencies, support functions, security concerns, and new courtrooms into

an existing building and new addition. The jury noted that "this project is an outstanding example of design restraint being used to contribute architectural dignity and quality to a quietly organized urban complex and public space with maximum benefit and minimum intervention."

**Federal Courthouse,
Montgomery, Alabama**

The site of landmark civil rights cases in the 1960s, the existing Frank M. Johnson Federal Courthouse and its classical design is complemented by the new courthouse. The site configuration and unique curvilinear design of the new structure produced a compact building and what the jury termed an "impressively well-organized and efficient complex."

1996 GSA Design Awards

Design aspects of federal court projects recently were recognized by

the General Services Administration (GSA). A total of 20 winners in the 1996 GSA Design Award competed in a field of 140 submissions. In the area of architecture, the Harold D. Donohue Federal Building and U.S. Courthouse in Worcester, Massachusetts, and the Federal Building and U.S. Courthouse in Minneapolis, Minnesota, received citations, with the U.S. Courthouse at Foley Square, New York City, receiving honors. The U.S. Courthouse in Boston and the Evo A. DeConcini Federal Building and U.S. Courthouse in Tucson, Arizona, won honors as designs in progress. The U.S. Court of Appeals in San Francisco won honors for its historic preservation, and the Federal Building and U.S. Courthouse in Minneapolis won a second citation for its plaza's landscape architecture. The sculpture of artist Diana Moore, placed at the Martin Luther King, Jr., Federal Courthouse in Newark, New Jersey, also was honored in the art category.

Committees continued from page 1

Senator Charles Grassley (R-IA) is expected to continue as chair of the Judiciary Committee's Subcommittee on Administrative Oversight and the Courts. The retirement of the subcommittee's ranking member Senator Howell T. Heflin (D-AL) leaves that committee position open, but at press time no member had been named.

Senator Ted Stevens (R-AK) will replace Senator Mark Hatfield (R-OR) as chair of the Appropriations Committee. Hatfield did not seek reelection. Senator Robert C. Byrd (D-WV) will continue as the committee's ranking Democrat. Senator Judd Gregg (R-NH) is expected to retain his position as chair of the Subcommittee on Commerce, State, and the Judiciary, and Senator Ernest Hollings (D-SC)

will return as the ranking member. It is still uncertain which members will be the chair and the ranking member on the committee's Subcommittee on Treasury, Postal Service, and General Government.

In the House, Representative Henry J. Hyde (R-IL) will continue to chair the Judiciary Committee with Representative John Conyers, Jr. (D-MI), expected to retain his seat as the ranking member. The retirement of Representative Carlos J. Moorhead (R-CA), who was the chair of the Subcommittee on Courts and Intellectual Property, means that Representative Harold Coble (R-NC) is in line to become the new chair. The retirement of Representative Patricia Schroeder (D-CO), who previously was the subcommittee's ranking member, means that Representative Howard L. Berman

(D-CA) likely will fill the senior Democratic seat.

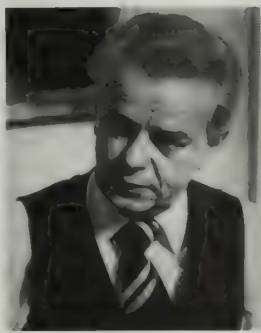
The House Appropriations Committee's leadership is expected to remain intact. Chairman Bob Livingston (R-LA) and ranking member Representative David R. Obey (D-WI) will retain their positions on the full committee. Chairman Harold Rogers (R-KY) and ranking member Alan B. Mollahan (D-WV) are expected to keep their leadership slots on the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies.

On the House Appropriations Subcommittee on Treasury, Postal Service and General Government, the new chair will be Representative Jim Kolbe (R-AZ) and Representative Steny H. Hoyer (D-MD) will continue as ranking member.

Committee Leadership Posts Begin to Fill



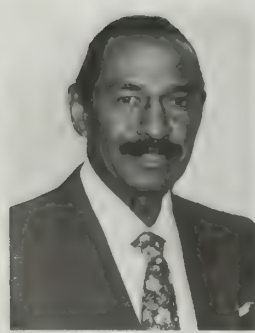
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Howard L. Berman
(D-CA)



Senator
Robert C. Byrd
(D-WV)



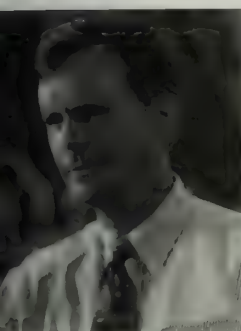
Representative
Harold Coble
(R-NC)



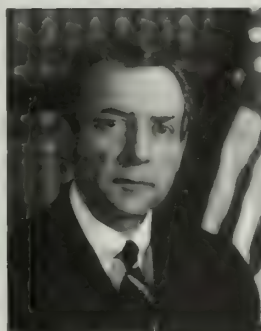
Representative
John Conyers, Jr.
(D-MI)



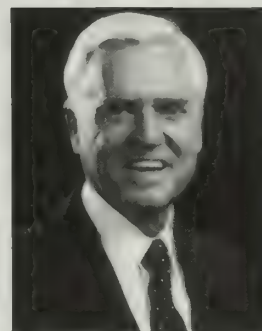
Senator
Charles Grassley
(R-IA)



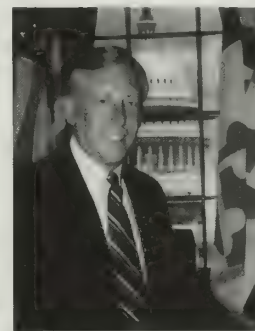
Senator
Judd Gregg
(R-NH)



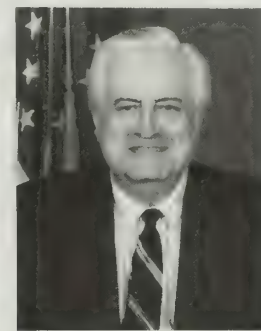
Senator
Orrin G. Hatch
(R-UT)



Senator
Ernest Hollings
(D-SC)



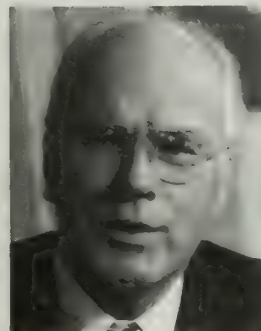
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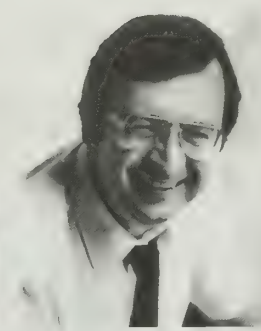
Senator
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(D-VT)



Representative
Bob Livingston
(R-LA)



Representative
Alan B. Mollahan
(D-WV)



Representative
David R. Obey
(D-WI)



Representative
Harold Rogers
(R-KY)



Senator
Ted Stevens
(R-AK)

Future issues of *The Third Branch* will contain new committee and subcommittee rosters and will follow the early activities of the 105th Congress.

Judiciary Reports to Congress On Optimal Utilization of Judicial Resources

A report recently approved by the Judicial Conference and transmitted to Congress shows that the federal Judiciary has taken extraordinary steps to maximize the use of its available resources to improve economy and efficiency. Congress requested the report, which was to address the Judiciary's distribution of judicial resources, space costs, contract services, automation and technology, and other opportunities for economy. Within these areas, according to the report, the Judiciary has developed a sophisticated allocation system correlating staffing to workload, a space and facilities management and planning process to pare costs and space, effective use of contracting services, especially on a national basis, and a host of automation and technology-based initiatives on par with private industry.

"We are committed to the optimal use of our resources," said Administrative Office Director Leonidas Ralph Mecham, "particularly in today's fiscal climate. The Judiciary has placed the highest priority on initiatives that identify substantial savings to the federal taxpayers, while improving the administration of justice."

The five reporting areas and a discussion of results are summarized here:

I. *The extent to which the current judicial workload corresponds to the distribution of judicial resources.*

The Judiciary measures the work performed in the courts and uses workload-driven formulas and sophisticated statistical forecasting to formulate budget requirements, and up-to-date workload information to distribute court-support

positions based on the workload in each court. Workload-based criteria also determine requirements for judgeship requests.

II. *The extent to which under-utilized facilities could be closed, or the sharing of courtroom space expanded, without appreciably affecting the delivery of justice, and the potential for savings in space costs that could be realized.*

Initiatives underway include reducing the size of the current and projected space inventory by closing or downsizing visiting court facilities where appropriate, reexamining the amount of space to be occupied in future buildings, and consolidating existing space when possible. The judicial space standards compiled in the U.S. Courts Design Guide are under review, and the Judicial Conference is exploring the feasibility of courtroom sharing, as urged by Congress, and will adopt an appropriate policy. Actions recently taken will save over \$12.4 million in annual rent costs.

Devitt Award Presented To Judge Godbold

Judge John C. Godbold (11th Cir.) received the 14th Annual Edward J. Devitt Distinguished Service to Justice Award in a ceremony recently in Montgomery, Alabama. The award was presented by U.S. Supreme Court Justice Anthony M. Kennedy, who chaired the selection committee. Pictured with Godbold and Kennedy are (from left) Justice Kennedy's wife, Mary, and Judge Godbold's wife, Betty. The Devitt Award recognizes the dedicated public service of members of the federal Judiciary.

(Photo credit: Paul Robertson)



III. *The extent to which savings and efficiencies can be realized through enhanced use of automation and other high technology initiatives.*

Automated systems currently available to the courts are comparable to those at similar federal entities and many private law firms. The Judiciary is exploring the use of Internet and intranet technologies, imaging technologies, electronic filing and noticing, videoconferencing, computer-based training, mobile computing, and other technologies and applications. This technology can improve accessibility to and accuracy of information, improve judge and staff productivity, enhance public access to court services, and facilitate case disposition.

IV. *The extent to which the use of contract services might be substituted for non-judge employees in the courts and what, if any, savings could be realized.*

In the Judiciary, contract services support court activities both at the national level as administered by the

AO and at the local level as administered by individual court units. In fiscal year 1995, the Judiciary obligated \$355 million to these contracts, which save Judiciary personnel resources and often provide more efficient and effective ways to deliver services. For example, a national drug-testing contract provides an economical way to test over 720,000 specimens annually. The contractor-operated Bankruptcy Noticing Center now is processing about 4 million notices in bankruptcy cases monthly, and will save \$11 million over four years.

V. *The extent to which the Judiciary is pursuing improvements and cost efficiencies in other areas.*

The Judiciary has focused on improving processes, policies, and program delivery. The creation by the Judicial Conference of the Budget Committee's Economy Subcommittee in 1993 was a major step toward coordinating efforts throughout the Judiciary to improve fiscal responsibility, accountability,

and efficiency. Continuing initiatives include the Judiciary Methods Analysis Program to identify innovative approaches or potentially better practices for accomplishing work; the automation of manual business processes in routine administrative tasks such as building and maintaining jury wheels, processing health benefit forms, and managing library inventory; an examination conducted by the National Academy of Public Administration on administrative services in district courts; the use of alternatives to incarceration and detention, which saves the federal government between \$31 and \$62 million a year; and the initiation of new financial management policies, practices, and procedures that help contain costs. The Judiciary also has adopted its first comprehensive *Long Range Plan for the Federal Courts*, with 93 specific recommendations for improvements.

The full report is available at www.uscourts.gov.



Pretrial Services— 20 Years Later

Twenty years have passed since the Speedy Trial Act authorized the establishment of pretrial services offices on a demonstration basis in 10 judicial districts, and 14 years since the Pretrial Services Act required pretrial services offices in each judicial district other than the District of Columbia. How do pretrial services stack up 20 years later?

In 1995, nearly 500 pretrial services officers and 150 probation officers nationwide dealt with 60,020 pretrial services defendants, up 7 percent from 1994. Between 1985 and 1995, the caseload increased 34

percent. For a look at how the workload has increased since data began to be reported in 1985.

Pretrial services also are meeting the objectives set by Congress and the Judiciary. Judge Gerald B. Tjoflat (11th Cir.) was chair of the former Judicial Conference Committee on the Administration of the Probation System when pretrial services became a pilot program. Said Tjoflat, "Before we instituted the pretrial services program, the courts lacked the personnel necessary to make effective use of the bail conditions prescribed by the Bail Reform Act of 1966. Monetary conditions were used in most cases. Many charged with crimes were detained because they were unable to post bond. Of those who were released, a signifi-

cant number failed to appear for hearings or trial. Still others committed further crimes. The pilot program was established to determine whether the provision of comprehensive information about the defendants to the bail judge and pretrial supervision of releasees would cut down on the cost of unnecessary pretrial detention, reduce the failure-to-appear rate, and deter the commission of crime by defendants on release. The demonstration districts in the pilot program showed that all three objectives were attainable, and so the program became a permanent feature of our criminal justice system."

A pretrial services officer's primary job is to prepare reports that help judges make decisions on



Pretrial continued from page 5

who should be released before trial. They look at the person's family ties and character, mental condition, length of residence in the community, past conduct, and history relating to drug or alcohol abuse. This information is used to assess the potential danger to the community posed by the release of the person arrested, while allowing the courts to impose the least restrictive conditions of release. Since 1985, the number of prebail reports has increased 130 percent. A recent sampling of judges' opinions regarding the reports showed that 94 percent of the judges were very satisfied with the quality of those reports.

Officers also monitor the behavior of defendants released pending trial, enforcing court imposed conditions of release, including drug testing and treatment, mental health treatment, curfew, home confinement with electronic monitoring, and restrictions on personal association, place of abode, and travel. By 1995, a total of 1,279 defendants were being placed under house arrest, a 57 percent increase over 1994. The use of electronically monitored home confinement expanded in 1992 to all district courts from a pilot in 14 district

courts and by 1995, 2,045 defendants were being monitored electronically.

Pretrial diversion is another way in which pretrial services may increase the efficiency and conserve the resources of the courts. Pretrial diversion cases involve supervision agreements before or at the initial hearing, usually as an alternative to the prosecution of criminal charges in federal court.

Earlier this year, officers from around the country celebrated the 20th anniversary of pretrial services with a symposium. Discussions touched on special concerns such as women defendants, juveniles, gangs, substance abuse, and immigration. Participants heard about innovative programs and ideas from local and state program representatives. Finally, working groups were formed to develop action plans in key areas: detention; special needs defendants; treatment; resource development; automation; and

management, planning, and evaluation. Participants now are prioritizing action items and developing operational strategies.

Asked about the future of pretrial services, Judge George P. Kazen (S.D. Tex.), chair of the Judicial Conference Committee on Criminal Law, said, "I see the supervisory function as a continuum, from pretrial through sentencing to probation, if any, or supervised release. The function of pretrial supervision is extremely important to the courts and will always be with us. We need expert advice on release questions, particularly since the passage of the Bail Reform Act. It's hard to predict the future with respect to the administrative structure of these various supervision functions, or indeed of the entire court system, if the pressure to downsize the government continues. However, the pretrial supervision function will always be vital."

Pretrial Services From 1985 to 1995*

	1985	1990	1995
Activated Cases	44,809	46,101	60,020
Prebail Reports	22,702	39,490	52,007
Post-bail Reports	3,815	4,098	4,437
Pretrial Diversion	2,269	2,475	1,933

*Prior to 1985, pretrial services statistics were not compiled for all districts.

Milestones in Pretrial Services History

1975

Speedy Trial Act of 1974 passes in January 1975. Title II of the Act authorizes the Director of the Administrative Office to establish a pretrial services agency, on a demonstration basis, in each of 10 judicial districts to assist in the reduction of crime by persons released to the community pending trial and to reduce the volume of unnecessary pretrial detention. The Federal Probation System celebrates its 50th anniversary.

1982

The Pretrial Services Act requires the Director of the AO to establish pretrial services in each judicial district, other than the District of Columbia.

1986, 1988

The Anti-Drug Abuse Acts, which carry mandatory minimum sentences, increase the number and percentage of defendants charged with drug crimes. These were the first of many subsequent acts to add mandatory minimum sentences for drug-related crimes that affect pretrial detention.

1979

The Judicial Conference makes its report to Congress on the administration and operation of the pretrial services agencies established in 10 demonstration districts. The final report recommends continuation of the program under Conference supervision. Congress provides funding for the continuation of the demonstration project.

1984

The Bail Reform Act of 1984 authorizes use of pretrial detention whenever appropriate, and provides for mandatory detention of individuals who have been previously found guilty of certain violent and drug offenses. Pretrial detention and release decisions are made by U.S. district or magistrate judges who consider information from pretrial services or probation officers.

1984

U.S. Sentencing Guidelines increase the length of time for case processing as the number of defendants increases.

Bankruptcy Leaders Meet With Chief Justice

Chief Justice William H. Rehnquist recently met with leaders of the National Conference of Bankruptcy Judges. Flanking the Chief Justice (left to right) are Bankruptcy Judges Robert D. Martin (W.D. Wis.), William E. Anderson (W.D. Va.), David W. Houston III (N.D. Miss.), Chief Bankruptcy Judge Robert F. Hershner Jr. (M.D. Middle) and Chief Bankruptcy Judge Frank W. Koger (W.D. Mo.).



AO Distributes Codes of Conduct Pamphlets

Isn't there something in the Code of Conduct about running for the local school board? What can we give to new employees who ask about ethical guidelines? The chief deputy clerk wants to know whether she can take an outside job; where should she look?

Judges and court employees ask questions like these every day. The answers to these questions, and much more, are in the *Guide to Judiciary Policies and Procedures*, Volume II, Chapter I (judges' code) and Chapter II (employees' code), but to make it easier for Judiciary employees to find the information, the Judicial Conference Committee on Codes of Conduct has prepared two pamphlets, the *Code of Conduct for Judicial Employees* and the *Code of Conduct for Federal Public Defenders*. These two codes apply to almost all

judicial employees. Copies of the pamphlets will be distributed to all judicial offices, including all chief judges and court unit heads. Another pamphlet, the *Code of Conduct for United States Judges*, will be distributed to all federal judges.

The pamphlets should begin arriving in court offices in December. More copies may be ordered from the Administrative Office Printing and Distribution Facility, 8034 Cryden Way, Forestville, Maryland 20747. Fax: (301) 763-4497.

These materials also are available on-line in a Westlaw database. To access the database, you must have a Judiciary-provided Westlaw password. Log on using your Judiciary-provided Westlaw password and then enter the database file name, which is CONDUCT. (This file name does not appear on the Westlaw menu because the file is not accessible by persons outside the Judiciary.) Once you've entered the database file, use the Westlaw search mechanisms.

Salaries Remain Frozen for Judges and Senior Executives

When Congress failed to grant judges a salary adjustment for the fourth consecutive year, senior level employees in both the executive and judicial branches also were affected. Administrative Office and Federal Judicial Center senior executives are compensated comparably to court unit executives, as well as to the Senior Executive Service in the executive branch. As a result, none of these senior level managers have received an increase in base pay since 1993, although these positions qualify for locality pay under the Federal Employees Pay Comparability Act, so the actual rates of pay have risen slightly in some instances. However, those positions with salaries statutorily set at the same rate as that of district court judges, such as the Director of the Administrative Office, have not received a raise since 1993.

In enacting the Ethics Reform Act of 1989, Congress and the President intended that the Employment Cost Index mechanism would provide top government officials with annual increases. However, neither the President nor Congress has supported the use of this mechanism and as a result, members of Congress, judges, and other senior government officials have received the same salary since 1993. If an ECI had been granted each year, circuit judges, who now earn \$141,700 would be paid \$155,345; district court judges, who now earn \$133,600, would be paid \$146,465; and bankruptcy and magistrate judges, who now earn \$122,912, would be paid \$134,748.

JUDICIAL MILESTONES

Appointed: Stan Bernstein, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of New York, November 1.

Appointed: Arthur J. Boylan, as U.S. Magistrate Judge, U.S. District Court for the District of Minnesota, November 1.

Appointed: B. Janice Ellington, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Texas, November 14.

Appointed: Paul W. Snyder, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Washington, November 1.

Appointed: Laura Taylor Swain, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of New York, November 1.

Elevated: Judge Gregory W. Garman, to Chief Judge, U.S. Court of International Trade, succeeding Chief Judge Dominick L. DiCarlo, November 1.

Elevated: Judge D. Brock Hornby, to Chief Judge, U.S. District Court of the District of Maine, succeeding Chief Judge Gene Carter, November 20.

Elevated: Judge Tom S. Lee, to Chief Judge, U.S. District Court for the Southern District of Mississippi, succeeding Chief Judge William Henry Barbour Jr., November 4.

Senior Status: Chief Judge Dominick L. DiCarlo, U.S. Court of International Trade, October 31.

Senior Status: Judge Edward J. Garcia, U.S. District Court for the Eastern District of California, November 24.

Senior Status: Judge Jose A. Gonzalez Jr., U.S. District Court for the Southern District of Florida, November 30.

Senior Status: Chief Judge John M. Shaw, U.S. District Court for the Western District of Louisiana, November 15.

Senior Status: Judge William D. Stiehl, U.S. District Court for the Southern District of Illinois, November 30.

Retired: Magistrate Judge Eduardo E. De Ases, U.S. District Court for the Southern District of Texas, November 13.

Retired: Magistrate Judge Charles H. Evans, U.S. District Court for the Central District of Illinois, November 26.

Retired: Bankruptcy Judge Frank D. Howard, U.S. Bankruptcy Court for the Western District of Washington, October 31.

Retired: Magistrate Judge John W. Wilson, U.S. District Court for the Western District of Louisiana, October 31.

Deceased: Senior Judge John M. Cannella, U.S. District Court for the Southern District of New York, October 30.

Deceased: Senior Judge Irving Ben Cooper, U.S. District Court for the Southern District of New York, September 17.

Deceased: Judge J. Daniel Mahoney, U.S. Court of Appeals for the Second Circuit, October 23.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of December 1, 1996

Courts of Appeals	
Vacancies	19
Nominees	0
District Courts	
Vacancies	55
Nominees	0
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	22

DECEMBER

Happy Holidays!

JANUARY

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 28 Number 12 December 1996

5-7 Sunday-Tuesday
Committee on Security, Space and Facilities

8-10 Wednesday-Friday
Committee on Rules of Practice and Procedures

9-10 Thursday-Friday
Committee on the Administration of the Bankruptcy System

16-18 Thursday-Saturday
Committee on Codes of Conduct

24-25 Friday-Saturday
Committee on the Budget

27-28 Monday-Tuesday
Committee on Financial Disclosure

PLEASE POST

VACANCY ANNOUNCEMENTS THE THIRD BRANCH

Vol. 28 Number 12 December 1996

CLERK OF COURT, Northern District of Georgia

The bankruptcy clerk's official duty station is Atlanta, Georgia, with divisional offices in Rome, Newman, and Gainesville. The clerk is responsible for administrative management of the non-judicial functions of the court. Qualifications: A minimum of ten years of progressively responsible administrative experience in public service or business, which provided a thorough understanding of organizations, procedural, and human aspects in managing an organization. At least three of the ten years must have been in a position of substantial management responsibility. An attorney in active practice of law may substitute practice for management experience on a year-to-year basis. Contact the court regarding the substitution of education or degrees for general experience. Annual salary range: \$85,456 to \$113,761. **Closing date: The court will begin reviewing applications after December 5, 1996, but the position will remain open until filled.** To apply, send an original and one copy of a resume with cover letter to Stacey W. Cotton, Chief Judge, United States Bankruptcy Court, 1415 U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia, 30303.

BANKRUPTCY JUDGE, Central District of California

Applications are being accepted for a bankruptcy judgeship to begin in January 1998 in the Central District of California, with chambers in Riverside. Basic qualifications include: admission to practice before the highest court of at least one state or the District of Columbia, membership in good standing in every bar in which membership is held; and at least five years of legal practice experience. The term of office is 14 years. Salary: \$122,912 per annum. Application forms may be obtained by calling, writing, or faxing a request to Office of the Circuit Executive, P.O. Box 193846, San Francisco, CA 94119-3846, (415) 744-6150 before January 1, 1997, to the Office of the Circuit Executive, P.O. Box 193939, San Francisco, California 94119-3939, (415) 556-6100. All applications must be in the format required by the Ninth Circuit. Application deadline: **Friday, January 31, 1997.**

MAGISTRATE JUDGE, District of Columbia

Applications are being accepted for a Magistrate Judge position in the District of Columbia. The basic jurisdiction for this position is specified in 28 U.S.C. Sec. 636. The salary of the position is \$122,912 per annum. The term of office is eight years. Interested persons may contact LeeAnn Flynn Hall, Administrative Assistant to the Chief Judge, Room 4106 U.S. Courthouse, 333 Constitution Ave., N.W., Washington, D.C. 20001, (202) 273-0435, for further information. Applications (an original and eight copies) must be submitted only by potential nominees personally and must be received no later than **January 2, 1997.**

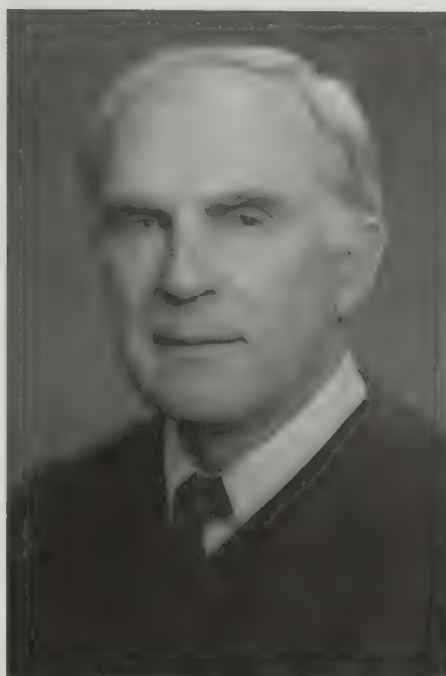
BANKRUPTCY JUDGE, Southern District of Texas

Applications are being accepted for a 14-year bankruptcy judge appointment in the Southern District of Texas. The judgeship, stationed in Houston, will require regular overnight travel to other divisions in the district. Salary: \$122,912 per annum. Interested applicants should notify in writing Gregory A. Nussel, Circuit Executive, U.S. Court of Appeals, Fifth Circuit, 600 Camp Street, New Orleans, Louisiana 70130, and the qualification standards and an application form will be sent to you. Application deadline is **January 17, 1997.**

Planning Liaison Members Selected

Now that the Long Range Planning Committee's work is completed (see *TTB*, April 1996), Judicial Conference committees have begun, at the Chief Justice's direction, to incorporate long-range planning into their policy-making functions. Special liaison members appointed by the chairs of committees with substantial planning responsibility will lead those efforts. The liaisons will work with their respective committees to encourage implementation of the *Long Range Plan for the Federal Courts* and continue the process of identifying strategic goals and objectives on matters within their committees' jurisdiction. They also will serve as points of contact on planning issues within the Conference organization and may be called upon to advise the Executive Committee on coordinating planning activities involving more than one committee.

Executive Committee chair Judge Wm. Terrell Hodges (M.D. Fla.) has asked Chief Judge Glenn L. Archer, Jr. (Fed. Cir.), to act as that committee's liaison and work with the liaison members of the other Confer-



Chief Judge Glenn L. Archer, Jr.

ence committees. Archer, in a memo to the other liaisons, noted the importance of sharing information and ideas, and has asked the liaisons, following their next committee meetings, to provide brief written descriptions of committee efforts to implement the Long Range Plan and general approach to planning. The Administrative Office Long Range Planning Office continues to serve as a planning resource for the Conference and its committees and to pro-

vide professional support for the work of the planning liaisons.

In addition to Archer, the committee planning liaison members designated so far are Judge J. Owen Forrester (N.D. Ga.), chair of the Committee on Automation and Technology; Judge Donald E. Walter (W.D. La.), Committee on the Administration of the Bankruptcy System; Judge Charles N. Clevert, Jr. (E.D. Wis.), Committee on the Budget; Judge Patricia M. Wald (D.C. Cir.), Committee on Court Administration and Case Management; Chief Judge Charles R. Butler, Jr. (S.D. Ala.), Committee on Criminal Law; Judge Nancy G. Edmunds (E.D. Mich.), Committee on Defender Services; Judge Pasco M. Bowman, II (8th Cir.), Committee on Federal-State Jurisdiction; Judge Joyce Hens Green (D. D.C.), Committee on the Judicial Branch; Chief Judge Edward N. Cahn (E.D. Pa.), Committee on Judicial Resources; Chief Judge Charles R. Wolle (S.D. Iowa), Committee on the Administration of the Magistrate Judges System; Judge Alicemarie H. Stotler (C.D. Cal.), chair of the Committee on Rules of Practice and Procedure; and Judge William M. Skretny (W.D. N.Y.), Committee on Security, Space and Facilities.

Committee Chairs Discuss Victims' Rights



The chair of the Judicial Conference Committee on Federal-State Jurisdiction, Judge Stephen H. Anderson (10th Cir.) (photo left), and the chairs of the Committee on Criminal Law, Judge George P. Kazen (S.D. Tex.) (photo right), and its Legislation Subcommittee, Judge Richard J. Arcara (W.D. N.Y.), met recently with Administrative Office staff to discuss the proposed constitutional amendment on victims' rights.

Head of Chief Justices Clarifies States' Views

Chief Justice Arthur A. McGiverin is the President, Board of Directors of the Conference of Chief Justices. He has been a member of the Iowa Supreme Court since 1978.

Q: What is the mission of the Conference of Chief Justices?

A: First, let me begin by briefly describing the Conference of Chief Justices (CCJ). CCJ, founded almost 50 years ago, is composed of the highest judicial officer in each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, and the territories of American Samoa, Guam, and the Virgin Islands.

Its mission is to improve the administration of justice in the states, commonwealths, and territories of the United States. CCJ carries out its mission by (1) developing and exchanging information; (2) educating and developing leaders to become effective managers; (3) promoting independence and effectiveness; (4) developing and advancing policies in support of common interests and shared values; and (5) supporting adequate funding and resources for operations.

The CCJ members work together to represent the judicial branches in their respective jurisdictions in the same way that the National Governors Association represents the executive branches of state government.

Q: What is the relationship between CCJ and the U.S. Judicial Conference?

A: CCJ is building an increasingly effective working relationship with the federal courts at the national level, particularly with the Judicial Conference of the U.S. (JCUS). I can think of a number of specific examples to illustrate how we're doing this: (1) CCJ membership on JCUS's Committee on Federal-State Jurisdiction; (2) JCUS membership on CCJ's Committee on State-Federal Jurisdiction; (3) the National Council of Federal and State Courts; (4) the first National Conference on State-Federal Judicial Relations held in 1992; and (5) the Manual for Cooperation between State and Federal Courts.

Q: Does CCJ have a position on the federalization of state crimes?

A: CCJ has expressed opposition to a variety of congressional bills preempting some area of state law, including the proposed federalization of many street crimes. CCJ believes that the problems of crime in our nation must be addressed in a meaningful way to provide resources to re-enforce the efforts of state judicial, legislative, and executive leaders to address crime in their jurisdictions. Further, CCJ strongly opposes federal action, which contrary to the principles of federalism, would have the effect of federalizing state criminal law and procedure. Finally, CCJ is concerned about the inefficient use of the special, limited resources of our federal courts.

Q: When it returns in January, Congress has promised to consider a victim's rights constitutional amendment. However, most states already have some form of victims' rights laws. Has the Conference of Chief Justices taken a position on the constitutional amend-

ment and what impact such a constitutional amendment would have on the state courts?

A: CCJ has not taken a position on any proposed federal constitutional amendment regarding victims' rights. We are, however, concerned that a meaningful dialogue take place at the national level on this subject. At the present time, there are numerous questions that need answers before we can make an appropriate response. For example:

On what specific proposal are we asked to comment? My understanding is that two proposals were introduced in Congress last April. Since that time, after dozens of different drafts, the two major proponents of the proposal introduced S.J. Res. 65 in September. I've been told that further modifications may be made. At the very least, we will have to see what is introduced in the next Congress.

All states have statutory provisions involving victims' rights and 29 states have constitutional provisions, most of which have been enacted recently. What is wrong with the implementation of these laws in the state system that justifies an overriding federal constitutional amendment?

Also of significant concern to most state courts is the implementation of such an amendment, if ratified. For instance, would we revert to the oversight by the federal district courts reminiscent of federal habeas corpus procedures, that were just modified because they were found to be unacceptable?

What remedies will be available for violations of these new federal constitutional rights?

Who will pay the administrative costs of any new federal remedies?

Many other questions will probably arise. I want to emphasize that the states are concerned with victims' rights. The extensive state

activity in this area is evidence of that concern. The philosophical debate is whether state and local governments are able to fashion appropriate relief or whether the U.S. Congress should design a "one size fits all" approach.

Q: The Conference of Chief Justices will meet next in February 1997. What key issues do you anticipate the Conference will address?

A: The CCJ plans to discuss a wide variety of important issues at its mid-year meeting. For one, we're concerned about funding for the State Justice Institute and for the Legal Services Corporation. A number of discussion items involve federal initiatives, such as the Welfare Reform Act; child support enforcement; federal regulations concerning sex offender registration; federal drug court and universal drug testing; state court improvement programs for child abuse, neglect, and foster care cases; full faith and credit enforcement of protection orders; and Brady, Byrne, and local law enforcement grants. Other important issues to be discussed at the mid-year meeting are victims' rights, domestic terrorism, and common law courts.

Seminar issues include discussion of state Supreme Courts as regulators of the legal profession, impact of the death penalty on state court work, and 1996 habeas corpus reform.

Q: The federal courts have been plagued by the problem of a growing caseload combined with inadequate resources. Do the state courts face a similar problem? And, if so, how are they coping?

A: For most state court systems, the 1990s has been a

time of scarce resources and rising caseloads. It is a struggle we probably will continue to face through the decade and into the next century.



*Arthur A. McGiverin, Chief Justice,
Iowa Supreme Court.*

To contend with these difficulties the state courts are using a number of strategies. For example, many courts have tightened their belts by cutting back on expenditures; asking their judges and staff to do more work with fewer resources; and cutting out programs or expenditures viewed as non-essential to court operations. Another way in which state courts are trying to cope with the situation is to create efficiencies through unification of their administrative structure, funding source, or organizational structure. Others are relying on the promise of technology to reduce the need for more staff, and at the same time, improve services. Most state court systems are seeking to improve their relationships with the

other branches of government at both the state and local levels.

Q: With the emphasis across the board on maximizing resources, federal courts are turning to such alternatives as videoconferencing. What tools have the state courts found to be effective in increasing judicial efficiency and efficacy?

A: Certainly, automation is an important tool that will help enhance the effectiveness and efficiency of all judicial systems. There are so many ways in which computers are aiding and enhancing court services.

Here are a few examples from my home state, Iowa, and I am sure these examples apply to other state courts. We use automation to collect and report data, generate forms and notices, calculate child support, produce jury instructions, and access up-to-date information on criminal defendants from law enforcement agencies. Electronic legal research provides judges with legal materials at the touch of a finger while they're on the bench, in their chambers, or even at home. Like the federal courts, states, as funds allow, are turning to videoconferencing for both administrative and judicial purposes.

Q: The last Congress made substantial changes in prisoner civil rights and habeas corpus laws. What effect, if any, have these changes had on the state courts?

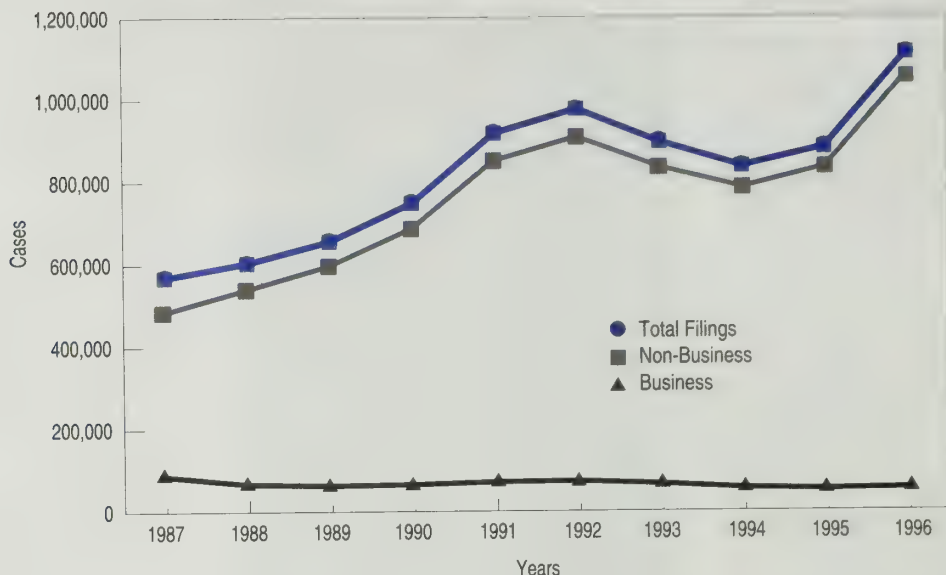
A: The simple answer is that we do not yet know the impact of the changes. These changes are in the process of being interpreted at the trial and appellate level. At this point, we can only hope for the best.



Bankruptcy Filings Continue Upward Climb

Total Bankruptcy Filings: 1987 - 1996

For the 12-Month Periods Ended September 30



The number of bankruptcy petitions filed in federal courts continues to rise. Filings climbed 25.9 percent to 1,111,964 in the 12-month period ending September 30, 1996, reaching an all-time high. In the same time period, total non-business or personal filings topped one million (1,058,444) for the first time. Filings first broke the one million mark (1,042,110) during the 12-month period ending June 30, 1996.

THE THIRD BRANCH

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Special Issue

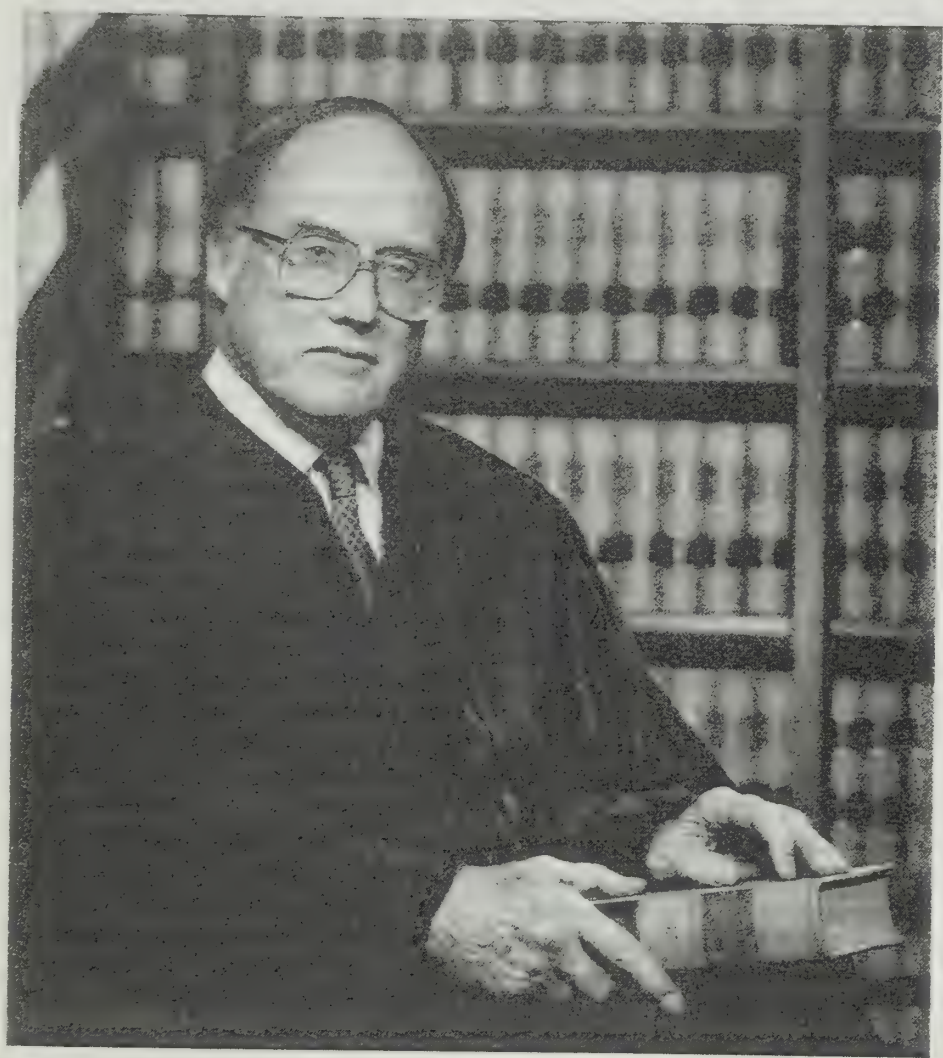
1996 Year-End Report on the Federal Judiciary

Overview

Once again this year—in my eleventh annual report on the state of the Judiciary—I am struck by the paradox of judicial independence in the United States: we have as independent a Judiciary as I know of in any democracy, and yet the judges are very much dependent on the Legislative and Executive Branches for the enactment of laws to enable the judges to do a better job of administering justice.

Federal judges have tenure during good behavior, and their compensation may not be diminished. And, since the time of Chief Justice John Marshall, these independent judges have exercised the authority to have the final say as to the meaning of the United States Constitution and the laws enacted by Congress. But it is Congress which decides how many federal judgeships there should be, and of what type they should be; Congress decides what kind of cases federal courts should hear, as well as, within limits, what procedures they should follow. Congress must appropriate money for the Judiciary's budget and determine the salaries of all federal judicial officers.

The 104th Congress enacted two bills of great importance to the Judiciary,



Chief Justice William H. Rehnquist

both of which contained major parts of recommendations by the Judicial Conference: the Antiterrorism and Effective Death Penalty Act, and the Federal Courts Improvement Act. Unfortunately, judges can only regret that Congress failed to repeal Section 140 of the Continuing Resolution Act of

December 15, 1981, Public Law 97-92 ("Section 140"), which provides that no cost-of-living salary increases shall be granted to federal judges without express legislative approval. The Senate version of this year's Federal Courts Improvement Act included a

See Report on page 2

Report continued from page 1

provision repealing Section 140, but that provision did not make it through the legislative process.

Congress compounded the negative impact of failing to repeal Section 140 when it declined in October to approve the 2.3 percent Employment Cost Index ("ECI") adjustment in salary for federal judges in January of 1997. This marks the fourth year in a row that federal judges have not received an ECI adjustment. The result is that federal judges today are paid no more than they were paid in 1993—which means that at this writing, inflation has reduced their salaries by 8.6 percent. In terms of dollars, federal judges are paid between \$12,865 and \$13,645 less than what they would have been paid if Congress had approved the ECI adjustments in the past four years.

The significance of Congress failing both to repeal Section 140 and to grant an ECI adjustment to judges' salaries cannot be overstated in terms of its effects on the morale and quality of the federal Judiciary. Section 140 jeopardizes the ability to retain and recruit to the Judiciary the most capable lawyers from all socioeconomic classes and geographical areas, including high-cost-of-living urban areas. We must ensure that judges, who make a lifetime commitment to public service, are able to plan their financial futures based on reasonable expectations.

While federal judicial salaries lag behind inflation, the salaries of the profession from which federal judges are recruited have fared differently. Today, the average salaries of partners in the nation's largest law firms are nearly two and one half times the salaries of federal judges. The *National Law Journal* reports that the average salary per partner in the nation's largest law firms in 1993 was \$310,644, and the average salary of top corporate general counsel was \$662,707. In contrast, in 1997 district and circuit court judges will be paid \$133,600 and \$141,700, respectively. Clearly, this disparity between the salaries of the judicial and legal professions cannot continue indefinitely without compromising the morale of the federal Judiciary and eventually its quality.

Judges realize that in smaller cities across our country these salaries will buy more than they do in metropolitan areas, and that lawyers' earnings vary considerably from place to place. But the judges are not expecting or requesting any major adjustment in their pay. They are only asking that the pay that was set some years ago be adjusted for increases in the cost-of-living since that time—a benefit that many working people in the private sector, and almost all employees of the federal government, regularly expect and receive.

I recognize that some members of Congress have said that they should not receive any cost-of-living adjustments until the federal budget is balanced. This kind of decision is obviously up to Congress, which has the primary responsibility for coming up with a balanced budget. But the Judiciary can play only a small part in the effort to balance the national budget. Congress, therefore, should not subject the Judiciary to the same sort of incentives that Congress might impose on itself.

The federal Judiciary is certainly mindful of the nation's effort to balance its budget. Indeed, the federal Judiciary has made significant contributions within its own budget. Federal judges, who serve without compensation on committees of the Judicial Conference, such as the Budget Committee, have implemented management policies in the federal Judiciary that, according to the Administrative Office of the U.S. Courts, saved the American taxpayers millions of dollars last year alone. By comparison, the amount of money involved in ECI salary adjustments for the federal Judiciary is insignificant. The Office of Management and Budget projects that an ECI adjustment of 3.1 percent will be due to judges in January 1998. If approved by Congress, that adjustment would cost approximately six million dollars, which is equal to only about one-quarter of one percent of the estimated total Judiciary budget for fiscal year 1998. And this percentage is from a Judiciary budget that in turn is only two-tenths of 1 percent of the entire federal budget. In short, federal judges in this country need and have earned

pay adjustments, and we therefore must renew our efforts to persuade Congress to repeal Section 140.

Another shortcoming in Congress' 1996 record on legislative matters concerning the federal Judiciary that will confront us again in 1997 is its decision not to create additional federal judgeships. Despite an increasing caseload and the fact that no new Article III judgeships have been created since 1990, Congress declined the Judicial Conference's request to create such positions. A similar request for new bankruptcy judgeships also was not acted upon by Congress. Circuit court judges continue to be especially squeezed between time constraints and heavy dockets. Eventually, Congress will have to reconcile this mismatch between federal caseload and judicial personnel. Either the former must be reduced or the latter increased if the quality of justice administered by the federal Judiciary is to be maintained.

Notwithstanding the problems of judicial administration that Congress and the federal Judiciary did not resolve in 1996, there were significant achievements this past year. Two pieces of legislation bearing on matters of judicial administration deserve specific recognition: the Antiterrorism and Effective Death Penalty Act was signed into law on April 24th; and the Federal Courts Improvement Act was signed on October 19th. Both of these laws contain valuable reforms that will improve the administration of justice. They are also commendable examples of the results that can be achieved when Congress consults with members of the federal Judiciary as it considers laws bearing on judicial administration.

The habeas corpus provisions of the Antiterrorism and Effective Death Penalty Act ("Antiterrorism Act") are especially important. For many years the federal Judiciary has been flooded by successive and repetitious habeas corpus petitions from state prisoners, especially in death penalty cases. State and federal courts have often duplicated each other's efforts or, even worse, worked at cross-purposes. Eight years ago, retired Justice Lewis F. Powell chaired a committee to in-

investigate the problems in this area and make appropriate recommendations. That committee—the Ad Hoc Committee on Federal Habeas Corpus Review of Capital Sentences—began a process of legislative-judicial consultation, primarily through the Judicial Conference, that came to fruition in the habeas corpus provisions of the Antiterrorism Act.

Relevant provisions of the Antiterrorism Act establish one-year deadlines for filing petitions; require certificates of appealability; limit successive petitions; and restrict access to the federal judiciary if a claim was adjudicated at the state level. In capital cases, the law has narrowed federal habeas corpus jurisdiction. If a state provides a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in state post-conviction proceedings brought by indigent prisoners whose convictions have become final for state law purposes, those prisoners' access to federal habeas corpus review is limited. These reforms of habeas corpus review reflect the wisdom of Alexander Hamilton's observation that "the national and state systems are to be regarded as one whole," and they will improve the quality of justice by coordinating and unifying the work of state and federal courts.

The Federal Courts Improvement Act contains 31 provisions endorsed by the Judicial Conference. Some of these provisions are identical to those recommended in *The Long Range Plan for the Federal Courts* adopted by the Conference in 1995: Section 201 expands the authority of magistrate judges; Section 205 raises the amount-in-controversy requirement in diversity jurisdiction cases; Section 401 increases filing fees in civil cases; and Section 605 abolishes the Special Railroad Court. Derived from a long range integrated plan composed by experienced federal judges, these reforms are especially valuable.

To encourage such deliberate and thoughtful reforms in the future, I have in the past year established a new mechanism that will institutionalize long range planning in certain Judicial Conference committees. In this era of expanding federal litigation but

shrinking resources, long range planning for the federal judiciary is as essential as legislative-judicial consultation on proposals concerning judicial administration before Congress.

The Year in Review

The Federal Courts' Caseload

As in 1995, the most significant highlight in the caseload of the Federal Courts in 1996 is that filings rose in the 12 regional courts of appeals, the U.S. district courts, and the U.S. bankruptcy courts. U.S. bankruptcy court filings soared 26 percent, from approximately 883,500 petitions to over 1,111,000, exceeding the one million mark for the first time in the history of the United States courts. Filings under chapters 7, 12, and 13 all increased. Chapter 7 filings, which accounted for

sequently transferred from the district courts where they were originally filed to the Northern District of Alabama as part of Multidistrict Litigation Docket Number 926). The second major area of increase in private cases was federal question litigation, which grew 4 percent. This rise resulted chiefly from personal injury cases (up 82 percent) and civil rights employment cases (up 25 percent). The surge in private personal injury cases was directly related to an influx of oil explosion cases in the Middle District of Louisiana, where total civil filings more than doubled. Cases involving the U.S. government as plaintiff or defendant jumped 13 percent, primarily due to marked increases in U.S. plaintiff recoveries of defaulted student loans (which nearly quadrupled) and federal prisoner petitions related to motions to vacate sentence (up 62 percent).

"We must ensure that judges, who make a lifetime commitment to public service, are able to plan their financial futures based on reasonable expectations."

over 68 percent of all bankruptcy filings, rose 27 percent. Chapter 13 filings, which accounted for 30 percent of all bankruptcy filings, rose 24 percent. Chapter 12 filings also increased 24 percent, but accounted for less than 1 percent of all bankruptcy filings. Filings under chapter 11, which accounted for 1 percent of all bankruptcy filings, remained essentially stable in 1996, dropping less than 1 percent.

Overall, district court filings climbed nearly 8 percent as civil case filings increased 8 percent, from approximately 248,300 to 269,100. A key reason for this growth was a rise in total private cases (up nearly 15,000 cases). This rise primarily resulted from an 18 percent jump in diversity of citizenship cases, mainly in personal injury/product liability filings (mostly related to the breast implant cases filed in the Northern District of Alabama), which jumped 56 percent. However, many of these cases were filed twice (i.e., once when they were transferred from state courts to federal courts, and again when they were sub-

Criminal cases in the U.S. district courts rose 5 percent, from nearly 45,800 to 47,900. While the 5 percent increase in drug filings contributed to this growth, the most significant factor was immigration cases, which went up 40 percent to approximately 5,500. Virtually all of the increase in immigration filings was concentrated in districts along the border with Mexico. Weapons and firearms filings declined 13 percent, and drunk driving and traffic cases decreased 3 percent.

The number of appeals filed in the 12 regional courts of appeals rose 4 percent in 1996 to attain an all-time high of almost 52,000 in 1996. Both criminal and civil appeals increased, rising 7 and 6 percent, respectively. Administrative agency appeals, bankruptcy appeals, and original proceedings decreased, dropping 14 percent, 14 percent, and 6 percent, respectively.

The number of judicial vacancies can have a profound impact on a court's ability to manage its caseload effectively. Because the number of judges confirmed in 1996 was low in comparison to the number con-

firmed in preceding years, the vacancy rate is beginning to climb. When the 104th Congress adjourned in 1996, 17 new judges had been appointed and 28 nominations had not been acted upon. Fortunately, a dependable corps of senior judges contributes significantly to easing the impact of unfilled judgeships. It is hoped that the Administration and Congress will continue to recognize that filling judicial vacancies is crucial to the fair and effective administration of justice.

The Supreme Court of the United States— Caseload Statistics

The total number of case filings in the Supreme Court declined from 6,996 in the previous Term to 6,595 in the 1995 Term—a decrease of 5.7 percent. Filings in the Court's in forma pauperis docket declined from 4,858 to 4,500—a 7.4 percent drop. The decline in the Court's paid docket was only 43 cases, from 2,138 to 2,095—a 2 percent decrease. During the 1995 Term, 90 cases were argued and 75 signed opinions were issued, compared to 94 cases argued and 82 opinions issued in the 1994 Term. No cases from the 1995 Term were scheduled for reargument in the 1996 Term.

The Administrative Office of the United States Courts

In the face of continuing fiscal austerity, the Administrative Office of the United States Courts continues to strengthen federal courts' capabilities to administer justice effectively. A decade ago, Administrative Office Director Leonidas Ralph Mecham launched an effort to delegate to the courts many of the administrative authorities Congress earlier had granted to the Administrative Office Director. As a result, the federal courts today are better able to manage their resources effectively and cope with resource shortages. Decentralized budget, procurement, and other management authorities have enabled each court to make decisions locally about how to achieve economies and where to devote its

limited resources most productively. Combining flexibility and local accountability, decentralized judicial administration has been key to the success of the federal Judiciary's ability to bring innovation and economy to the courts' operations while preserving high standards for the delivery of justice.

An important achievement in decentralization occurred this year with the full implementation of the Court Personnel System. The new system provides the federal courts with a modern human resource management program that gives each court the authority to determine the appropriate number and types of staff positions within overall budget limits. Within funding controls, jobs will be designed and compensation levels set based on each court's needs compared with standard benchmarks. In concert with the existing decentralized budget and procurement authorities, the decentralization of personnel management authority augments the capability of court managers to determine how to use budgeted funds most effectively—enabling consideration, for example, of whether it would be most advantageous to spend limited additional funds on two entry-level positions, one senior position, contract services, computers, or other matters.

Throughout this year, the Administrative Office continued to play a central role in the Judiciary's efforts to economize. The agency analyzed program and operating costs, conducted studies and evaluations, and identified opportunities for improvement or savings. The Administrative Office made recommendations to Judicial Conference committees and implemented Judicial Conference economy measures, assisted the courts in making changes, and communicated with Congress and others regarding the Judiciary's needs and accomplishments. Many new approaches for improving program performance and reducing costs have been successful, and others hold promise for the future. Early this year, the Administrative Office published a report detailing the Judiciary's numerous economy achievements, which amounted to more than \$250 million annually in both savings and cost avoidances.

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One of the more promising means of increasing the efficiency of judicial administration and the business processes in the courts is the use of technology. The Administrative Office is working with Judicial Conference committees, judges, and court personnel to increase the use of automation in the courts. Dozens of automation projects are under way, including new systems for financial accounting, jury administration, and library administration. Imaging, internet and web technologies, satellite videoconferencing, and other cutting-edge technologies may substantially improve routine court operations and reduce the volumes of paper handled. Electronic alternatives offer promise for streamlining court administrative operations, simplifying filing processes for litigants, saving time and money, and improving accessibility, accuracy, and usefulness of information.

In 1996, the Administrative Office registered many accomplishments that should help the courts operate more

See Report on page 5

Report continued from page 4

effectively. They include development of architecture standards for information systems in the Judiciary; continued installation of the Judiciary's data communications network; identification of efficient court administration practices through the Methods Analysis Program; completion of a study by the National Academy of Public Administration on alternative court administrative structures; continued development of a national automated bankruptcy noticing system; issuance of a contract to a service center to build jury wheels for district courts; coordination of a comprehensive space inventory; agreement with the Department of Justice on implementing a pre-trial drug testing pilot program; and completion of more than 100 financial audits.

The Administrative Office continues to make the best of its own budget, which has been growing at a much slower rate than the Judiciary's as a whole. In the face of an escalating workload, the Judiciary's budget has risen 60 percent since 1991. The Administrative Office's funding grew only 23 percent in the same period. The agency has had a hiring freeze in place for several years, and its staff size is smaller today than it was two years ago. From a long-term perspective, the Administrative Office's portion of the total Judiciary budget has substantially declined. Twenty years ago, the Administrative Office accounted for 3.6 percent of the Judiciary's funding. Ten years ago, its portion was 3.1 percent; five years ago, it was 2.5 percent; and now it is 1.5 percent.

Since its establishment in 1939, the Administrative Office has provided a wide range of support and services in administrative, financial, statistical, legislative liaison, technical, legal, communications, and program management areas for the federal Judiciary, as well as staff support to the Judicial Conference of the United States and its committees. The agency has been shifting its emphasis away from the direct provision of administrative services better handled by the courts themselves to focus on program development, management, communications, analysis, and review functions critical

to the operations of the Judicial Branch. While the nature of its work has been changing, the demands on the Administrative Office to provide support to the Judiciary nonetheless continue to grow.

The Federal Judicial Center

The Federal Judicial Center is the federal courts' agency for continuing education and research. Much of the Center's work in 1996 helped implement legislative actions. The Center inaugurated a newsletter to alert federal courts to decisions interpreting last April's Prisoner Litigation Reform Act, which governs inmate lawsuits over the conditions of their confinement, as well as to decisions regarding the habeas corpus provisions of the Antiterrorism Act, which govern how federal courts handle prisoners' habeas corpus petitions.

Last September, from its studio here in Washington, the Center broadcast a videoseminar on "New Developments in the Federal Law of Habeas Corpus," which analyzed the new habeas corpus provisions for the benefit nationwide of approximately 1,700 federal judges, judicial staff, and others. The broadcast was part of the Center's efforts to help federal judges with death penalty litigation, and it also marked a new era in the Center's education and training programs. Developments in satellite technology now justify placing "downlinks" in federal courthouses to enable judges and court staff to receive educational broadcasts. Next year, the Center, the Administrative Office, the United States Sentencing Commission, and, of signal importance, federal courts across the country will establish a broadcast network in the federal courts. This effort is an excellent example of cooperation among the agencies. The Center's expertise in videoproduction and curriculum design will enable the entire third branch to make good use of this form of communication and education. I am grateful to Congress, especially to Chairman Harold Rogers of the House Appropriations Subcommittee, for pressing the Center and the courts to explore use of this new technology.

Such broadcasts cannot replace education that allows judges and staff from different regions the opportunity for sustained sharing of techniques, but they add another dimension to Judicial Branch education while responding to legislative demands to reduce travel costs. The Center's satellite broadcasts continue its efforts to provide training through videocassettes and other in-court methods. Eighty percent of federal court support staff who receive training from the Center received it at their work site.

As to prisoners' condition-of-confinement cases, the Center's new *Resource Guide for Managing Prisoner Civil Rights Litigation* provides practical advice on effective management of cases under the Prisoner Litigation Reform Act. The Resource Guide is part of a broader Center program to help federal courts with pro se litigation—cases filed without lawyers. Such cases impose special burdens on courts to ensure that they are handled fairly and efficiently.

The first interactive electronic federal court "kiosk" began operations this November. It was a joint project of the United States District Court for the District of Columbia and the Center and was instituted in part to help with non-prisoner pro se litigation. Several state courts, such as Arizona's, have kiosks to let citizens file cases and get information about schedules, jury duty, and employment opportunities, thus enhancing services while saving staff time for other work.

The Center's education programs in 1996 reached over 30,000 judges and Judicial Branch staff. These programs addressed case law and legislative developments, giving special attention to such areas as the use of bankruptcy appellate panels, science and health care issues in litigation, jury selection and operations, supervision and investigation of defendants and offenders, and effective court management.

The Center's research—primarily in response to Judicial Conference committee needs—included a major survey of judges and chief probation officers on sentencing statutes and guidelines and analysis of the opera-

tion of Federal Rules of Procedure governing class action litigation.

Lastly, at the suggestion of Judge Rya Zobel, the Center's Director, the Center's Board began a year-long analysis of the priorities the Center should assign to its many missions. I am confident that the results of this planning process will help maintain the Center as a vital element in improving federal judicial administration.

United States Sentencing Commission

Review of the sentencing guidelines was a top priority of the U.S. Sentencing Commission in 1996. The review's objective was to reduce the complexity of guideline application and to assess how well the guidelines are meeting the congressional objectives outlined in the Sentencing Reform Act of 1984. To this end, the Commission declared a moratorium on guideline amendments in 1996 (except for those necessary to implement congressional directives). The action was well received throughout the Judiciary.

The amendment hiatus allowed commissioners to gather insights from judges, attorneys, probation officers, and academics on recommended changes, and to begin narrowing the options for possible guideline amend-

ments. In addition, the Commission expended considerable resources reviewing and responding to sentencing-related legislation enacted by Congress involving mandatory restitution, terrorism, international counterfeiting, drug trafficking, and immigration. By year's end, the Commission plans to publish a series of amendment options for comment.

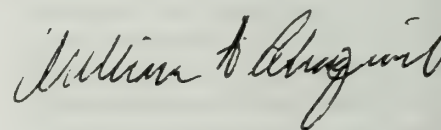
The Commission appointed Dr. John H. Kramer as its Staff Director in July 1996. Dr. Kramer is Executive Director of the Pennsylvania Commission on Sentencing and a Professor of Sociology and Criminal Justice at The Pennsylvania State University. Finally, the Commission plans to distribute its first televised Public Service Announcements in 1997. The ads target "at-risk" youth with an educational message about the significant punishments that result upon conviction for federal crimes.

Conclusion

The federal Judiciary's achievements and disappointments of the past year illuminate both the basic principle of separation of powers and the interdependent relationship that exists between Congress and the Judiciary. In the words of Justice Robert Jackson,

"While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." To preserve liberty, the Judicial Branch of the federal government is separate, equal, and independent from the Legislative Branch. Yet both must work together if feasible solutions are to be found to the practical problems that confront today's federal Judiciary.

Over the years, Congress has properly recognized the need for close consultation with the Judiciary, thereby contributing to a proper reconciliation of judicial independence with the basic principle of democratic accountability. The Antiterrorism Act and the Federal Courts Improvement Act are two examples of what can be accomplished when the branches of government work together. We look forward to working with Congress in the coming year to resolve the ongoing problems faced by the Judiciary.



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Four Years and Counting: Lack of Pay Raise Prompts Judicial Conference Action

In a mail ballot last month, the Judicial Conference voted unanimously to endorse a course of action that is intended to lead to the first pay raise for judges in four years.

Judges currently are entitled to receive an annual pay adjustment only when the rates of General Schedule employees are adjusted and Congress waives section 140 of P.L. 97-92, which provides that judges receive salary increases only as the result of specific legislative action or when Congress affirmatively authorizes an annual salary increase for judges. Judges' salaries have been traditionally tied to those of members of Congress and Executive Schedule employees.

It is Judicial Conference policy that judges should receive pay adjustments automatically and annually to protect against salary erosion. The recent Conference action endorsed the following recommendations:

- ★ a catch-up pay adjustment of approximately 9.6 percent to cover four lost years;
- ★ the delinkage of judges' pay from Executive Schedule and congressional pay and linkage of annual pay adjustments for judges to annual changes in the rates of pay of the General Schedule; and
- ★ the repeal of Section 140 of P.L. 97-92.

See Pay Raise on page 2

Representative Hyde Discusses First Session for House Judiciary Committee

Representative Henry J. Hyde (R-IL) has served in the House since 1975. He chairs the House Committee on the Judiciary.

Q: The last Congress failed to pass either an Article III judgeship bill or a bankruptcy judgeship bill, even though the Judicial Conference had urged the creation of additional judgeships based upon the increasing federal court workload. Will your committee consider either of these judgeship bills in the coming session? If so, are there factors in addition to the evaluation of caseload statistics that are especially important to these judicial resource decisions?

A: I have been a strong supporter of authorizing the additional 11 bankruptcy judgeships requested by the Judicial Conference. In fact, last year, my Judiciary Committee favorably reported legislation—H.R. 2604—to this effect. Unfortunately, however, opposition was expressed by some Democratic

See Hyde on page 10

INSIDE	Judiciary Seeks to Balance Workload and Needs	pg. 3
	More Judgeships in 105th Congress?	pg. 4
	RAND Institute Releases Study on CJRA	pg. 7

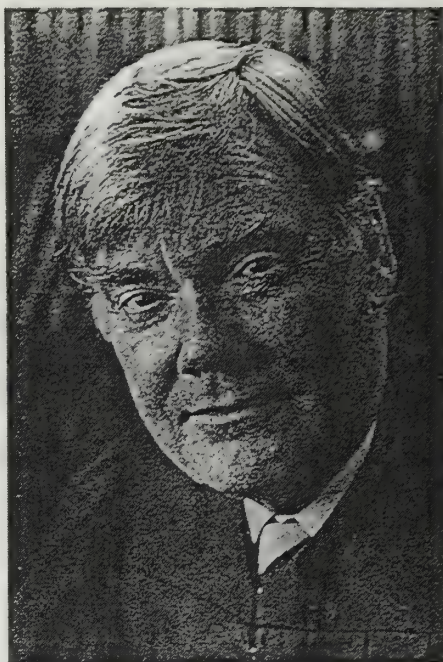
Pay Raise continued from page 1

These initiatives will be a high legislative priority for the Judiciary in the 105th Congress.

Since 1993—the last time federal judges received a pay raise—judges have seen their pay decline in real dollars, both in terms of inflation and when compared to the salaries of fellow legal professionals. In that time, judges have experienced a real salary loss of 12.2 percent, when measured against the Consumer Price Index. When compared to others in the legal profession, judges fared even worse. This disparity, as Chief Justice William H. Rehnquist pointed out in his 1996 *Year-End Report on the Federal Judiciary*, “jeopardizes the ability to retain and recruit to the Judiciary the most capable lawyers from all socioeconomic classes and geographical areas, including high cost-of-living urban areas.”

Senate Judiciary Committee chair Orrin G. Hatch (R-UT) has said he agrees with the Chief Justice on this point. Hatch also has indicated he would support delinkage of judicial pay from the salaries of members of Congress. Senator Charles E. Grassley (R-IA), who chairs the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, has said he might be willing to consider a pay raise for judges. House Judiciary Committee chair Henry J. Hyde (R-IL) has said he strongly supports salary increases for federal judges, and that the issue of judicial pay should be decided separately from the issue of congressional compensation. At the request of the Judiciary, Hatch and Hyde have agreed to introduce a pay bill consistent with Judicial Conference policy.

Judge Barefoot Sanders (N.D. Tex.), chair of the Judicial Conference Committee on the Judicial Branch, has taken a strong leadership role in the development of the



Judge Barefoot Sanders (N.D. Tex.), chair of the Judicial Conference Committee on the Judicial Branch.

Conference policy, and has written to all federal judges asking for their support for this legislation. Federal Judges Association President Judge W. Earl Britt (E.D. N.C.) is working closely with Sanders and his committee.

The judges' concern over their compensation is supported by the irregular pace of increases they have received in recent years. Judges first were covered by a statutory provision for annual pay adjustments in 1975, when the Executive Salary Cost-of-Living Adjustment Act was passed. This law provided that judges would receive the same percentage increase accorded General Schedule employees. However, the provisions of this act rarely were implemented because in subsequent years Congress passed separate measures cutting off such raises for themselves and other high level officials. A further limitation was placed on federal judges in 1981 when section 140 of P.L. 97-92 was enacted. It provides that no salary increase shall be given to judges in the absence of specific legislative

action. In 1989, Congress passed the Ethics Reform Act, which provided a catch-up pay raise of approximately 33 percent over two years. At that time, judicial salaries in real terms had declined 30 percent over the preceding two decades. Over the same period—1969 to 1988—more judges left the federal bench for economic reasons than in all the time from the establishment of the federal Judiciary in 1789 to 1969. Modest pay adjustments were approved for the first two years under the 1989 act, but since 1993 Congress has denied payment of any additional increases.

In the 104th Congress, legislation was introduced to repeal section 140 and delink the pay of judges and Congress. However, the legislation did not move. Former Senator Howell T. Heflin (D-AL) introduced a bill to delink judges' pay from the pay of members of Congress and repeal section 140, saying, “They make a lifetime commitment to public service as federal judges. They should be able to plan their financial futures based on the reasonable expectation that their compensation will at least keep even with annual cost-of-living increases.” The Senate version of the Federal Courts Improvement Act, S. 1887, contained a provision to repeal section 140, but the House version of the bill did not. When the Senate bill experienced a series of delays and holds during the last two weeks of the session, the House version passed.

The 104th Congress also failed to produce an Employment Cost Index (ECI) adjustment for judges, or for members of Congress and top executive and judicial branch officials. Section 637 of H.R. 3610, the Department of Defense Appropriations Act of 1997, contained a provision denying top government officials the 2.3 percent ECI due to rank-and-file government employees, many of whom also received substantial locality pay increases.

Judiciary Seeks to Balance Workload and Judgeship Needs

The Judicial Conference strives to balance the need to control growth in the number of judgeships with the resources that are appropriate for the courts' workload, a representative of the Conference told a Senate subcommittee earlier this month.

"The courts continue to introduce new tools to equalize judicial workloads and reduce requests for additional judgeships," said Chief Judge Julia Smith Gibbons (W.D. Tenn.), chair of the Conference's Committee on Judicial Resources. "However, even with these numerous efforts to fully utilize judicial officer resources, there are workload needs which cannot be met with the current number of judicial officers," Gibbons told the Senate Judiciary Subcommittee on Administrative Oversight and the Courts.

Workload has increased in both district and appellate courts since the last judgeship bill was enacted in 1990. Although there was no growth in appellate and district judgeships from 1990 to 1996, caseload increased nearly 27 percent in the courts of appeals and 21 percent in the district courts.

Senator Charles E. Grassley (R-IA), chair of the Senate subcommittee, said that he will be conducting a series of hearings on the allocation of judgeships. This hearing focused on the U.S. Court of Appeals for the Fourth Circuit, as well as national issues relating to judicial resources.

"Both the executive and legislative branches have been forced to downsize and produce cost savings to the taxpayer," said Grassley. "There's no reason the judicial branch shouldn't be required to do the same."



Chief Judge Julia Smith Gibbons (W.D. Tenn.), chair of the Judicial Conference Committee on Judicial Resources, testifies on judgeships before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts.

The subcommittee's ranking minority member, Senator Richard Durbin (D-IL), cautioned, "We should not cheapen Article III of the Constitution." In his opening statement, Durbin said "We must not be penny wise and pound foolish. Many proposals to increase judicial efficiency may actually end up costing more and accomplishing less."

In addition to Gibbons, the Conference representative at the two-hour-long hearing, also testifying were Chief Judge J. Harvie Wilkinson III (4th Cir.), Judge Samuel J. Ervin III (4th Cir.), and Judge Gerald Tjoflat (11th Cir.).

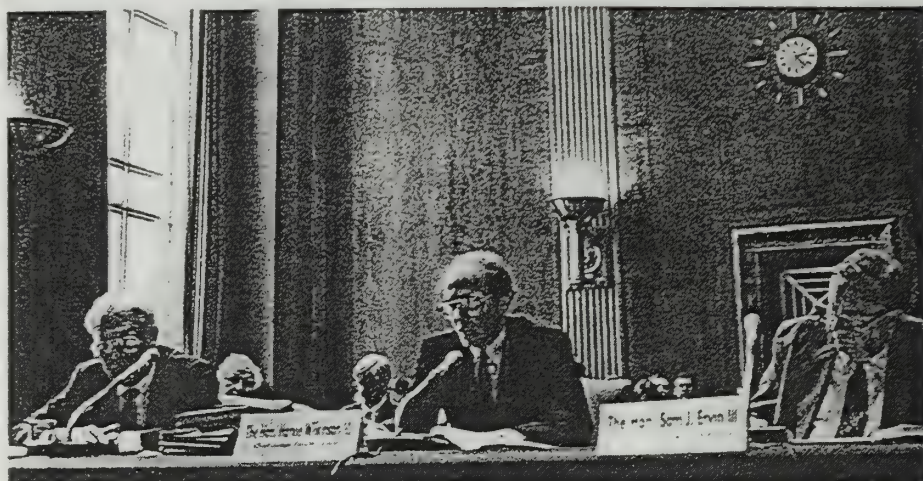
Gibbons told the subcommittee that the Judicial Conference, through its committee structure, biennially surveys the appellate and district courts to evaluate judgeship needs. This systematic review process involves not only the Conference, but each court and each circuit judicial council and takes into account up-to-date detailed caseload data and other relevant factors. The Judiciary plays an advisory role in the creation and distribution of

judgeships. Congress has the authority to establish or eliminate Article III judgeships, and also defines the jurisdiction and determines the workload of the courts.

"As part of the normal judgeship survey process or as a separate initiative, the Judiciary has used a variety of approaches to maximize the use of resources and to ensure that resources are distributed in a manner consistent with workload," Gibbons said in her testimony. Among the approaches used are

- **Regular surveys of judgeship needs:** The Conference has adopted more conservative criteria for determining when to recommend creation of additional judgeships in the courts of appeals and district courts.
- **Recommending temporary rather than permanent judgeships:** This is done in those instances where the need for additional positions is demonstrated, but it is not clear that the need will exist permanently.

See Judiciary on page 4



In addition to Judge Gibbons, testifying before the subcommittee were (left to right) Judge Gerald Tjoflat (11th Cir.), Chief Judge J. Harvie Wilkinson III (4th Cir.), and Judge Samuel J. Ervin III (4th Cir.).

- **Consideration of a process to recommend not filling vacancies:** In March 1997, the Judicial Conference will consider a process for not filling certain vacancies similar to the process currently used by the Conference in determining if vacant bankruptcy judgeships should be filled.
- **Use of senior judges:** Almost 400 senior judges are serving nationwide. In the district courts during the past five years senior judges closed 15 percent of the civil cases and criminal defendants terminated, and conducted between 16 and 19 percent of all trials. In the courts of appeals during the same time, senior judges participated in almost 15 percent of all oral hearings and submissions on briefs.
- **Sharing of judgeships:** District judgeship positions have been shared to meet the resource needs of more than one district without the cost of an additional judgeship.
- **Intercircuit and intracircuit assignment of judges:** This practice provides a short-term solution to disparate judicial resource needs of districts within and between circuits. On average, during the past 10 years, 415 visiting judges disposed of 5,270 appeals and

243 visiting judges closed 2,277 cases in the district courts.

- **Use of magistrate judges:** Use of magistrate judges for many routine court matters allows for more effective use of Article III judges.
- **Use of alternative dispute resolution:** With increasing frequency, district courts are using various alternative dispute resolution procedures, such as arbitration, mediation, and early neutral evaluation, as means of settling civil disputes without litigation. All the courts of appeals have programs designed to encourage resolution of many civil appeals by the parties without the need for judicial resources.
- **Use of technology:** The Judiciary continues to explore ways to help align caseloads through technological advancements, where judges can assist other circuits and districts without the need to travel.

"Over the last 20 years the Judicial Conference has developed, adjusted, and refined the process for evaluating and recommending judgeship needs in response to congressional concerns," Gibbons told the subcommittee. "The Judicial Conference is constantly evaluating the need to control growth and the need to seek resources that are appropriate to the workload."

Judgeship Bills and Nominations Are New Business In 105th Congress

The 105th Congress was only days old when the White House submitted 22 judicial nominations to Congress, 20 of which were submitted during the 104th Congress. When the last Congress adjourned, there were 28 nominations pending. The Senate Judiciary Committee has

indicated it will continue with judicial nomination hearings, although none have yet been scheduled. According to staff for committee chair Senator Orrin Hatch (R-UT), the committee's legislative priorities for the current session will be a balanced budget, property

rights, baseball antitrust, tort reform, and intellectual property and copyright legislation.

At the committee's first meeting of the new session, ranking minority member Senator Patrick Leahy (D-VT), in discussing committee priorities, said, "I can think of none

more important than making sure we do our part to consider and approve judicial nominations without delay." Leahy referred to the Senate's "abysmal" record last session of filling federal judicial vacancies. The Senate confirmed only 17 judges in the second session, none of whom were for the courts of appeals. In response, committee chair Hatch noted that pressure is coming from both political parties to either speed up or slow down the confirmation process, and that many of his Republican colleagues were concerned about the attention judicial activism was receiving. Hatch said he would continue to conduct a fair, bipartisan, thorough confirmation process. As an indicator of cooperation, Hatch pointed to the 202 federal judges appointed in President Clinton's first term, comparing that number to the 194 confirmed under President Bush and the 164 confirmed during President Reagan's first term.

New Judgeships on Agenda

After its March 1997 meeting, the Judicial Conference will transmit a request for the creation of new judgeships. The proposal will reflect the Conference's re-evaluation of the request made at the beginning of the 104th Congress. At the September 1996 meeting, the Conference voted to authorize the Administrative Office to transmit to Congress a request for another 21 permanent and 12 temporary district court judgeships. The judgeship request followed detailed reviews by the courts and the Conference's Judicial Resources Committee. However, the bill was never considered by Congress. As Chief Justice Rehnquist noted in his 1996 *Year End Report on the Federal Judiciary*, "Another shortcoming in Congress' 1996 record on legislative matters concerning the federal Judiciary that will confront us again in 1997 is its

decision not to create additional federal judgeships. Despite an increasing caseload and the fact that no new Article III judgeships have been created since 1990, Congress declined the Judicial Conference's request to create such positions."

Congressional leadership, including Senator Charles E. Grassley (R-IA) and Judiciary Committee Chair Hatch, has expressed caution in considering any expansion of the federal Judiciary. On February 8, Grassley held a subcommittee hearing on allocation of judgeships at which Chief Judge Julia Smith Gibbons (W.D. Tenn.), chair of the Conference's Committee on Judicial Resources, testified on behalf of the Judicial Conference. Also testifying at the hearing were Chief Judge J. Harvie Wilkinson III (4th Cir.), Judge Samuel J. Ervin III (4th Cir.), and Judge Gerald Tjoflat (11th Cir.) (See story on page 3.)


Temporary Judgeship Bill Transmitted

Last month, acting on behalf of the Judicial Conference, AO Director Leonidas Ralph Mecham sent to House and Senate leadership a draft judgeship bill that would convert five temporary district judgeships to permanent positions and extend the time limit on six temporary judgeships. The request was approved by the Judicial Conference at its September 1996 meeting.

In his letter, Mecham said the request is predicated on the continuing high caseload in the affected courts. Nationwide, federal judges faced caseloads that in 1996 climbed nearly 8 percent in the district courts and 4 percent in the courts of appeals.

The draft bill changes when vacancies in certain temporary judgeship created in 1990 by P.L. 101-650 would be filled. Vacancies now are beginning to occur in districts with temporary judgeships, and in several of these districts the

rise in caseload justifies either making the temporary judgeship a permanent position or extending the time period of the temporary judgeship. In the Eastern District of California, the Southern District of Illinois, the Northern District of New York, and the Eastern District of Virginia, the existing temporary district judgeships would become permanent and the expired temporary position in the Northern District of Alabama would become permanent.

In addition, the length of time to fill a judgeship would be extended when vacancies occur in temporary judgeships created by P.L. 101-650 in the District of Hawaii, the Central District of Illinois, the District of Kansas, the Eastern District of Missouri, the Northern District of Ohio, and the District of Nebraska. 

Subcommittees Set for 105th Congress

Most of the Congressional committees made their subcommittee assignments in the first few weeks of the new Congress. The legislation of greatest interest to the Judiciary will be considered by the Judiciary and Appropriations Committees and subcommittees. In the 105th Congress, Senator Orrin G. Hatch (R-UT) chairs the Senate Judiciary Committee and Senator Ted Stevens (R-AK) chairs the Senate Appropriations Committee. Representative Henry J. Hyde (R-IL), chairs the House Judiciary Committee and Representative Bob Livingston (R-LA) heads the House Appropriations Committee.

The subcommittee assignments for these key-committees are the following:

See Subcommittees on page 6

House

House Committee on the Judiciary

Judiciary Subcommittee On Courts and Intellectual Property

Howard Coble (R-NC), chair
F. James Sensenbrenner (R-WI)
Elton Gallegly (R-CA)
Bob Goodlatte (R-VA)
Sonny Bono (R-CA)
Edward A. Pease (R-IN)
Chris Cannon (R-UT)
Bill McCollum (R-FL)
Charles T. Canady (R-FL)

Barney Frank (D-MA), ranking
John Conyers, Jr. (D-MI)
Howard L. Berman (D-CA)
Rick Boucher (D-VA)
Zoe Lofgren (D-CA)
William D. Delahunt (D-MA)

House Committee on the Judiciary

Judiciary Subcommittee on Crime

Bill McCollum (R-FL), chair
Steven H. Schiff (R-NM)
Stephen E. Buyer (R-IN)
Steven J. Chabot (R-OH)
Bob Barr (R-GA)
Y. Tim Hutchinson (R-AR)
George W. Gekas (R-PA)
Howard Coble (R-NC)

Charles E. Schumer (D-NY), ranking
Sheila Jackson Lee (D-TX)
Martin T. Meehan (D-MA)
Robert Wexler (D-FL)
Steven R. Rothman (D-NJ)

House Appropriations Committee

Subcommittee on Commerce, Justice, State, and the Judiciary

Harold Rogers (R-KY), chair
Jim Kolbe (R-AZ)
Charles H. Taylor, (R-NC)
Ralph Regula (R-OH)
Michael P. Forbes (R-NY)
Tom Latham (R-IA)

Alan B. Mollohan (D-W.V.), ranking
David E. Skaggs (D-CO)
Julian C. Dixon (D-CA)

House Appropriations Committee

Subcommittee on Treasury, Postal Service, and General Government

Jim Kolbe (R-AZ), chair
Frank R. Wolf (R-VA)
Ernest J. Istook, Jr. (R-OK)
Michael P. Forbes (R-NY)
Anne Northup (R-KY)
Robert Aderholt (R-AL)

Steny H. Hoyer (D-MD), ranking
Carrie P. Meek (D-FL)
David E. Price (D-NC)

Senate

Senate Committee on Appropriations

Subcommittee on Commerce, Justice, State, and Judiciary

Judd Gregg (R-NH), chair
Ted Stevens (R-AK)
Pete V. Domenici (R-NM)
Mitch McConnell (R-KY)
Kay Bailey Hutchison (R-TX)
Ben Nighthorse Campbell (R-CO)

Ernest F. Hollings (D-SC), ranking
Daniel K. Inouye (D-HI)
Dale L. Bumpers (D-AR)
Frank R. Lautenberg (D-NJ)
Barbara A. Mikulski (D-MD)

Senate Committee on Appropriations

Subcommittee on Treasury, General Government, and Civil Service

Ben Nighthorse Campbell (R-CO), chair
Richard C. Shelby (R-AL)
Lauch Faircloth (R-NC)

Herb Kohl (D-WI), ranking
Barbara A. Mikulski (D-MD)

Senate Committee on the Judiciary

Subcommittee on the Administrative Oversight of the Courts

Charles E. Grassley (R-IA), chair
Strom Thurmond (R-SC)
Jeff Sessions (R-AL)
Jon Kyl (R-AZ)

Richard J. Durbin (D-IL), ranking
Russell D. Feingold (D-WI)
Herb Kohl (D-WI)

CALENDAR DATES FOR
THE THIRD BRANCH

Vol. 29 Number 2 February 1997

20-21 Thursday-Friday
Executive Committee

FEBRUARY

MARCH

10-12 Monday-Wednesday
Workshop for Bankruptcy Judges I

11-12 Tuesday-Wednesday
Judicial Conference of the United States

12 Wednesday
Committee on the Judicial Branch

13-14 Thursday-Friday
Advisory Committee on Bankruptcy Rules

20-21 Thursday-Friday
Advisory Committee on Civil Rules

PLEASE POST

VACANCY ANNOUNCEMENTS THE THIRD BRANCH

Vol. 29 Number 2 February 1997

BANKRUPTCY JUDGE, Northern District of Illinois

The Judicial Council of the Seventh Circuit is seeking applicants for a bankruptcy judge position in the Northern District of Illinois, headquartered at Rockford. Applicants should be admitted to practice in at least one state court and be members in good standing of every bar of which they are members; have a reputation for integrity and good character; be of sound mental and physical health; and have demonstrated outstanding legal ability and competence as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and wiring, and familiarity with courts and the court process. Salary: \$122,912. Appointment is for 14 years. Interested applicants should send their applications to Collins T. Fitzpatrick, Circuit Executive, Judicial Council of the Seventh Circuit, 2780 U.S. Courthouse, 219 South Dearborn Street, Chicago, IL 60604. Applications are to be received by March 31, 1997.

CIRCUIT EXECUTIVE, Eighth Circuit

Chief administrative officer under 28 U.S.C. § 332(e), working under direction of the Chief Circuit Judge and the Circuit Judicial Council; responsibility for various nonjudicial activities of the Court of Appeals, including budget and personnel; circuit-wide responsibility for space and facilities, automation, telecommunications, statistical data and reports, and biennial Judicial Conference; provides staff and support to Judicial Council; and acts as liaison to other courts within the Eighth Circuit and the Administrative Office of the U.S. Courts. Must possess a minimum of ten years of progressively responsible administrative experience, including at least five years in a position of substantial responsibility; experience in federal courts is preferred. A postgraduate degree in public, business, or judicial administration or completion of a JD or LL.B. may be substituted for two years of administrative experience. JD or LL.B. degree preferred, but not required. Must possess strong analytical, communication, and interpersonal skills. Salary up to \$123,100, depending on qualifications. Duty station is St. Louis, Missouri. Starting date: August 4, 1997. Send five copies of resume and salary history by March 31, 1997, to Circuit Executive Search Committee, c/o June L. Boadwine, Circuit Executive, P.O. Box 75428, St. Paul, MN 55175. For additional information, call (612) 290-3311.

CHIEF PROBATION OFFICER, Eastern District of Arkansas

Applications are being accepted for the Chief Probation Officer position headquartered in Little Rock with a field office in Jonesboro. The district has a combined Probation/Pretrial Services Office, which is responsible for supervising a caseload of approximately 1,000 individuals. A 4-year degree from an accredited college or university with specialization in one or more of the social sciences appropriate to the position is required. An advanced degree in an appropriate area is preferred. Salary: JSP 14-17 (\$61,348-\$112,669), depending on specialized experience. Interested applicants must submit an original and three copies of a resume and cover letter to Clerk of Court, U.S. District Court, 600 West Capitol Avenue, Suite 402, Little Rock, AR 72201-3325. Closing date: February 28, 1997.

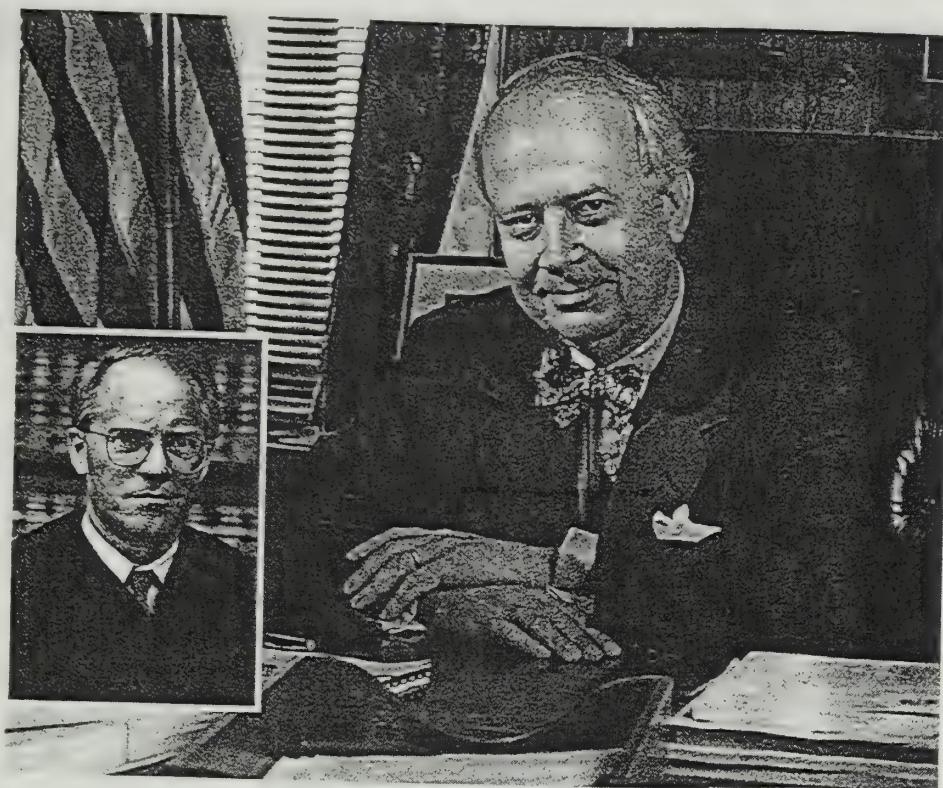
DIRECTOR OF AUTOMATION AND TECHNOLOGY, District of Maryland

Qualified applicants are being sought to fill the Director of Automation Technology position in the District of Maryland. The Director is a member of the Clerk's staff and is responsible for managing all facets of the automation program as well as the technical support staff. The Director will also play a leading role in helping to formulate the court's ongoing short- and long-range automation plan. Qualified applicants must possess an MIS degree with five years of managerial experience and excellent technical, human relation and communication skills. Salary: CL 30 (\$51,625-\$83,951). Qualified applicants must submit two copies of their resume, with salary history, to Frank L. Monge, Clerk, U.S. District Court, 101 West Lombard Street, Baltimore, Maryland 21201. Open until filled.

Chairs Change on the Budget Committee

Chief Judge Richard S. Arnold (8th Cir.) has stepped down as chair of the Budget Committee, a post he has held since 1987. The Chief Justice has selected Judge John G. Heyburn II (W.D. KY.) as Arnold's successor. Heyburn is no stranger to the Budget Committee. He was appointed to the committee in 1994 and has participated with Arnold in the presentation of the Judiciary's annual budget request to Congress. Heyburn was instrumental in initiating discussions with the Office of Management and Budget (OMB), and, with Arnold, in helping to forestall a "negative allowance" OMB intended to apply against the Judiciary's fiscal year 1998 budget request.

Arnold chaired the Budget Committee during a time of increasing government-wide fiscal austerity. The Judiciary, like the other branches of government, has struggled to meet the demands of an increasing workload with less than requested funding, and Arnold has been an effective advocate for the Judiciary's needs and accomplishments throughout this period. Arnold helped revamp how the Judiciary's annual budget request is presented to Congress, beginning a




Judge John G. Heyburn II (W.D. KY.), inset, becomes the new chairman of the Budget Committee, as Chief Judge Richard S. Arnold (8th Cir.) steps down after nine years.

presentation consistent with the executive and legislative branch presentations, which are familiar to Congress. Administrative Office Director Leonidas Ralph Mecham praised Arnold for his "extraordinary leadership for over nine years as chairman. The entire Judiciary owes him a great debt of gratitude."

While Arnold chaired the Budget Committee, the Economy Subcommittee was formed with its mission to initiate and pursue studies within

the Judiciary on economizing. Many of the cost-cutting initiatives the subcommittee has identified—major national cost-cutting accomplishments and ongoing efforts—have resulted in significant cost savings and avoidances.

Arnold will continue to play a role in the Judiciary's budget process as a member of the Judicial Conference Executive Committee, which approves the Judiciary's financial plans. 

CJRA Study Finds Most Cost in Civil Litigation Outside Courts' Control

The Judiciary has received the study, issued last month, by the RAND Institute for Civil Justice on the Civil Justice Reform Act (CJRA). It is seen as an important first step in the Judicial Conference's statutory responsibility to evaluate the CJRA and make recommendations for its future implementation. The study

notes the limitations of procedural reform in reducing the cost of civil litigation, finding that issues unrelated to judicial case management account for 95 percent of the variation in litigation costs.

"We are pleased to receive RAND's study on CJRA. It will assist the Judiciary with its review

of this statute," said Leonidas Ralph Mecham, secretary to the Judicial Conference. "After reviewing RAND's findings, federal judges, who daily face the challenges of case management, will make significant contributions to the Judicial Conference report. I am confident that the

See CJRA Study on page 12

JUDICIAL MILESTONES

Appointed: Gordon Miles Davis as a U.S. Magistrate Judge, U.S. District Court for the Northern District of Florida, November 26.

Appointed: Tracy L. Myers-Dumm, as U.S. Magistrate Judge, U.S. District Court for the District of Hawaii, December 1.

Appointed: William I. Garfinkel, as U.S. Magistrate Judge, U.S. District Court for the District of Connecticut, November 22.

Elevated: Chief Judge George P. Kazen, to Chief Judge, U.S. District Court for the Southern District of Texas, succeeding Chief Judge Norman W. Black, December 7.

Elevated: Judge F. A. Little, Jr., to Chief Judge, U.S. District Court for the Western District of Louisiana, succeeding Chief Judge John M. Shaw, November 16.

Elevated: Judge Anna Diggs Taylor, to Chief Judge, U.S. District for the Eastern District of Michigan, succeeding Chief Judge Julian Abele Cook, Jr., December 31.

Senior Status: Chief Judge Norman W. Black, U.S. District Court for the Southern District of Texas, December 6.

Senior Status: Chief Judge Julian Abele Cook, Jr., U.S. District Court for the Eastern District of Michigan, December 30.

Senior Status: Judge Sam A. Crow, U.S. District Court for the District of Kansas, November 15.

Senior Status: Judge George F. Gunn, Jr., U.S. District Court of the Eastern District of Missouri, December 1.

Senior Status: Judge John F. Keenan, U.S. District Court for the Southern District of New York, December 31.

Senior Status: Judge Marcel Livaudais, Jr., U.S. District Court for the Eastern District of Louisiana, December 31.

Senior Status: Judge Alan A. McDonald, U.S. District Court for the Eastern District of Washington, December 13.

Senior Status: Judge John T. Noonan, Jr., U.S. Court of Appeals for the Ninth Circuit, December 27.

Senior Status: Judge Harold D. Vietor, U.S. District Court for the Southern District of Iowa, December 29.

Senior Status: Judge Charles E. Wiggins, U.S. Court of Appeals for the Ninth Circuit, December 31.

Senior Status: Judge Phyllis A. Kravitch, U.S. Court of Appeals for the Eleventh Circuit, December 31.

Resigned: Magistrate Judge Robert C. Blair, U.S. District Court for the District of Hawaii, November 30.

Retired: Judge Gene E. Brooks, U.S. District Court for the Southern District of Indiana, December 31.

Retired: Judge Brian Barnett Duff, U.S. District Court for the Northern District of Illinois, October 30.

Deceased: Senior Judge Con. G. Cholakis, U.S. District Court for the Northern District of New York, December 1.

Deceased: Senior Judge Walter E. Hoffman, U.S. District Court for the Eastern District of Virginia, November 21.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of February 1, 1997

Courts of Appeals
Vacancies
Nominees

District Courts
Vacancies
Nominees

Court of International Trade
Vacancies
Nominees

Courts with
"Judicial Emergencies"

Courts Identified for Operation Drug TEST

Currently, 24 U.S. district courts have volunteered to participate in an expanded pretrial drug testing program, Operation Drug TEST.

Operation Drug TEST (Testing, Effective Sanctions and Treatment) was proposed to the Judiciary at President Clinton's call for an approach to address illegal drug use by defendants in the state and local criminal justice system. A portion of the President's proposal included a universal policy providing for drug testing of federal defendants before their initial appearance and for guidance to federal prosecutors in seeking appropriate measures for defendants who fail pretrial drug tests. The Judicial Conference, through its Executive Committee, approved participation in the program provided participation by courts was voluntary and that the Department of Justice (DOJ) funded the program. In September 1996, the DOJ signed a Memorandum of Understanding (MOU) with the Administrative Office (AO), establishing the pretrial drug testing program through the Judiciary's pretrial services offices in 25 federal districts. The MOU requires DOJ to provide adequate funding for the duration of the project, consistent with the Executive Conference's direction.

DOJ will reimburse the AO on a quarterly basis for the cost of testing, treatment, administration, and supervision of defendants tested as part of Operation Drug TEST, as well as for costs of equipment, supplies, training, and construction of testing or collection facilities.

Operation Drug TEST will be implemented in the pretrial services offices of the participating district

courts. Officers will use either on-site testing laboratories, which produce results in less than an hour, or hand-held testing devices, which produce results in two to ten minutes. Defendants will be tested for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). All drug test results will be reported to the judicial officer, prosecutor, and defense attorney.

Refusal by a defendant to submit to a first appearance drug test is not a basis for detention. However, prosecutors may request the court to order an immediate drug test if a reasonable basis exists to suspect the defendant is a drug user.

Historically, pretrial services officers conducted drug testing, prior to Operation Drug TEST, when there was a reasonable basis for believing that a defendant was illegally using drugs. All defendants were screened for possible drug use to determine the need for further analysis, based on such things as a defendant's concession or history of drug use, a defendant's arrest on a drug-related crime, and interviews with a defendant's family. Operation Drug TEST expands current practice to include defendants who have not been identified as possible or probable illegal drug users.

Pretrial drug testing has long held benefits to judicial officers. In a report to Congress on the Demonstration Program of Mandatory Drug Testing of Criminal Defendants required by the Anti-Drug Abuse Act of 1988, the AO recommended that Congress authorize the expansion of pretrial services urinalysis tests for inclusion in the pretrial services reports, noting, however, that such expansion could be costly.

"I am pleased that the Judiciary has taken a leadership role in moving this important project toward fruition," said Leonidas Ralph Mecham, Director of the AO. "I believe that any initiative that

assists a judge in making a well-informed decision about a defendant's pretrial release condition is a worthwhile undertaking."

List of Operation Drug TEST Districts

Middle District of Alabama

District of Arizona

Eastern District of Arkansas

District of Columbia

District of Connecticut

Northern District of Georgia

Northern District of Illinois

Northern District of Indiana

Northern District of Iowa

Eastern District of Louisiana

Western District of Michigan

Southern District of Mississippi

Western District of Missouri

District of Nebraska

District of New Hampshire

District of New Jersey

District of New Mexico

Middle District of North Carolina

Northern District of Ohio

Eastern District of Pennsylvania

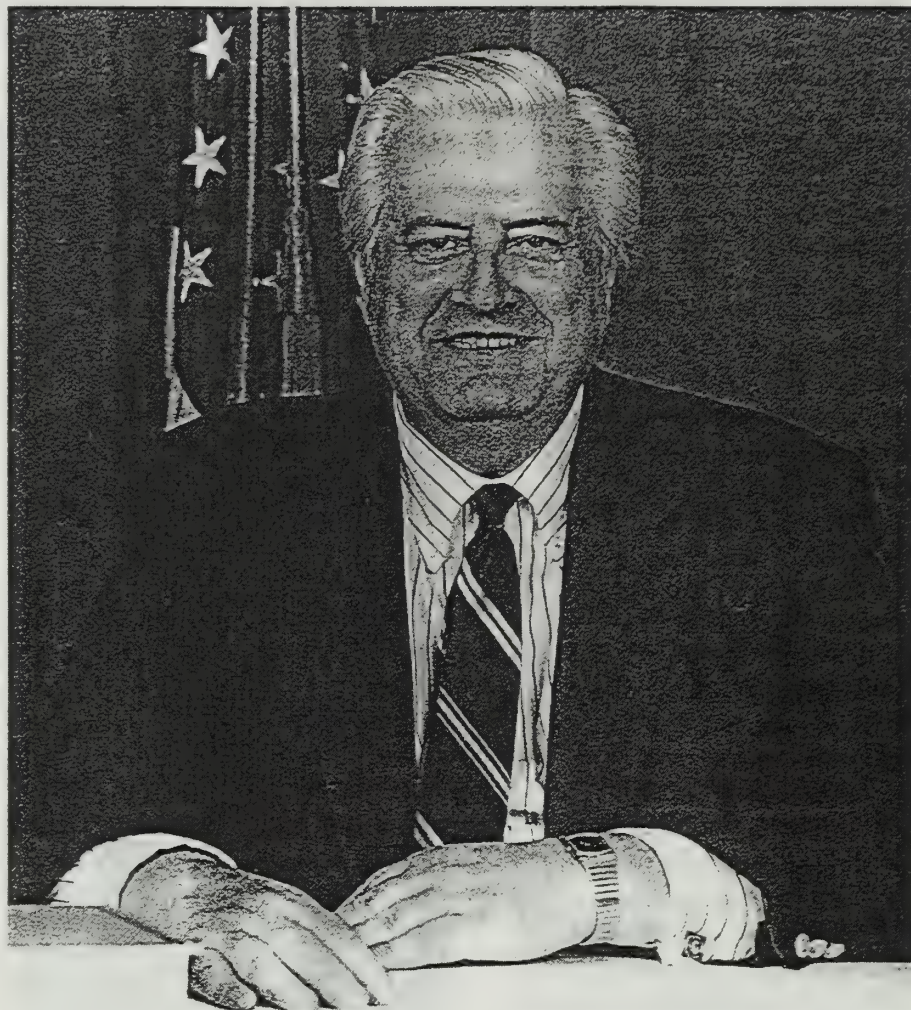
District of Puerto Rico

Eastern District of Tennessee

District of Utah

Western District of Virginia

Hyde continued from page 1



Representative Henry J. Hyde (R-IL.).

members, which forced postponement of House floor action on the measure. They proposed that Judicial Conference recommendations for additional bankruptcy judgeships would have to be offset by the elimination of corresponding numbers of judgeships. This would have codified a rigid, unfair formula that would not take into account the continuing potential for bankruptcy caseload increases nationwide. I felt that we could not afford to mortgage the future of our bankruptcy courts in this manner. Although I sought to resolve the impasse through negotiation, certain House

and Senate members insisted on other new requirements that were also unacceptable to the judicial branch. In the current Congress, I view the legislation for additional bankruptcy judgeships as a priority.

On the issue of additional Article III judgeships, our committee recognizes the importance of expeditious judicial disposition of pending criminal and civil cases. It will be in this light that the committee will review the judicial workload data submitted in support of new Article III judgeships. I am concerned, however, that a large number of existing Article III judgeships remain un-

filled. So, the first priority is for the President to submit nominations to fill existing vacancies and for the Senate to consider those recommendations.

Q: Recently you announced, as did House Speaker Newt Gingrich, that the Judiciary Committee would hold hearings on "judicial activism." Could you discuss some of the issues the committee will focus on in the course of the inquiry?

A: At the outset, I would emphasize that these hearings are not intended to undermine the independence of the federal Judiciary. They are intended to bring about a balanced, informed discussion of the difference between judicial decision-making and political or legislative decision-making.

There are several proposals that were pending before the committee in the last Congress that may be discussed in the course of these hearings. For example, in the 104th Congress, I cosponsored H. Con. Res. 101, which expresses the sense of Congress that every federal district court that has a desegregation order in effect that is more than three years old should review that order to ensure that the means originally chosen to achieve desegregation are still currently effective. There was also a bill (H.R. 1170) that passed the House in the last Congress, sponsored by Congressman Sonny Bono (R-CA.), that would provide that cases challenging the constitutionality of measures passed by state referendum be heard by a three-judge court. I also recall that last year Congressman Donald A. Manzullo (R-IL.) introduced legislation, H.R. 3100, that would limit the authority of federal courts to fashion remedies that require state and local jurisdictions to assess, levy, or

collect taxes. I think all of these issues could well be considered in the upcoming hearings.

Q. As you know, Congress has denied federal judges the cost-of-living adjustment provided in the Ethics Reform Act of 1989 in each of the past four years. As federal judges know, you spoke out opposing this during the 104th Congress. How will the 105th Congress address this issue? Do you have any advice on how federal judges should go about trying to solve this perennial problem?

A. I strongly support salary increases for federal judges and believe that the issue of judicial pay should be decided separately from the issue of congressional compensation. In the last Congress, I sponsored H.R. 2701, which would have both repealed section 140 and delinked cost-of-living adjustments for federal judges from members of Congress and Executive Schedule employees. I know that this issue is a top priority for the Judicial Conference, and we need to explore various legislative options, including the appropriations process. You will continue to have my full support in this effort.

Q. A Victims of Crime Constitutional Amendment has received a great deal of recent attention. Are you concerned about the effect that such a proposed amendment, if enacted and ratified by the states, would have on the administration of the federal and state criminal justice systems?

A. Yes, I am concerned. I believe that the time has come for the victims of the many terrible crimes that we read about in the newspapers to have rights in the criminal process. Judges, more than

most people, know that many victims have their lives completely torn apart by crimes. Those people should not be pushed aside in the criminal process. They should have a voice.


"I strongly support salary increases for federal judges and believe that the issue of judicial pay should be decided separately from the issue of congressional compensation."

Having said that, however, it is also important that a crime victims' amendment be drafted in such a way that it does not undermine the rights of accused persons. It should also be drafted in a way that does not undermine the effectiveness of federal and state criminal justice systems. There is no doubt that such an amendment will place some additional administrative burdens on the court systems.

I am working with Senator Jon Kyl (R-AZ.) and Senator Dianne Feinstein (D-CA.) to develop language that will minimize this burden. I am currently asking for comments on revised language from many interested parties, including judges, court administrators, prosecutors, and defense lawyers. I would certainly encourage your readers who have thoughts on this matter to write me. I believe that it is important to incorporate a broad spectrum of opinion into our thinking on this matter.

Q. As you know, the Judicial Conference has longstanding concerns with the gradual federalization of criminal law enforcement activities that have traditionally been the responsibilities of state and local governments. You have announced that the

Judiciary Committee may act on legislation addressing violent crimes committed by minors. What are the considerations supporting federal assumption of this responsibility?

A. The federal role in prosecuting juvenile offenders is currently very limited and, in my view, it should stay that way. I do not support a dramatic shift towards the federalization of juvenile crime prosecutions, and the legislation that the committee is most likely to consider is not designed to do this. Instead, the Juvenile Crime Control Act of 1997, H.R. 3, has two primary goals. First, in the geographical areas where the federal government has principal jurisdiction, such as federal lands, the proposed juvenile crime legislation would make it easier for the government to prosecute violent juveniles as adults. It would do this by amending various procedures governing such cases. Changing these procedures may result in an increase in juvenile drug or firearm prosecutions in areas where state and local law enforcement have primary jurisdiction, but it is anticipated that such increases would be relatively modest in number. Second, the legislation is intended to encourage the states to deal more aggressively with juvenile criminals, particularly those who commit the most serious violent acts. Accordingly, a primary reason for changing federal procedures for juvenile crime is to establish a model for the states to follow. 

CJRA Study continued from page 7
final report we submit to Congress on June 30, 1997, as required by statute, will accurately and thoroughly reflect the courts' experience in implementing the CJRA."


Throughout the history of the U.S. civil justice system, independent judicial officers have been called upon to strike the balance between efficiency and justice. It is this balance that will be addressed as Congress and the Judicial Conference discuss the ramifications of the RAND study. The recommendations will be considered at the Conference's March meeting.

RAND confirms that many of the case management practices long employed by federal judges and incorporated into the federal rules are effective in reducing delay. The median disposition time for civil cases in U.S. district courts is about eight months, and has remained fairly constant over the past seven years, never exceeding 10 months.


Significantly, RAND found that there are limitations to how much procedural reform can reduce the cost of civil litigation. Specifically,

the study found that attorney perceptions, rather than case management procedures, drive most litigation costs, and case management techniques account for only half of the reduced time to disposition.

The RAND report notes that the CJRA "has raised the consciousness of judges and lawyers and brought about some important shifts in attitude and approach to case management on the part of the bench and bar." During its implementation, the Judiciary adopted many of the Act's suggested procedures. The amendments to the Civil Rules that took effect on December 1, 1993, addressed many of the CJRA's suggestions, and other non-rules related issues were later addressed in 1995 by the *Long Range Plan for the Federal Courts*.

From 1990, the year of CJRA's enactment, to 1995, the percentage of civil cases over three years old has dropped from 10.6 percent to 5.6 percent of all cases, and the actual number has been reduced from 25,672 to 13,538. 

Comment Invited on ABA Citation Resolution

The federal Judiciary seeks comment on an American Bar Association (ABA) resolution calling for state and federal courts to develop a standard citation system and recommending a format that could be used by state and federal courts. The ABA resolution is available from the Administrative Office or at www.ABANET.ORG/citation/home.html. Written comments may be sent electronically using cc:mail to citation~aohub in Word-Perfect 6.1 or earlier versions; or in print or on diskette to Appellate Court and Circuit Administration Division, ATTN: ABA Citation Resolution, Suite 4-512, Administrative Office of the U.S. Courts, Washington, D.C. 20544, or faxed to (202) 273-1555. Please submit comments no later than Friday, March 14, 1997. For additional information contact Joan Countryman at (202) 273-1543. 

THE THIRD BRANCH

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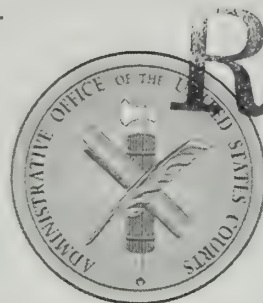
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THE THIRD BRANCH

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of the
Federal
Courts




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March 1997

Federal Judiciary Seeks Smallest Funding Increase in 12 Years

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FEDERAL DEPOSIT

Bills Introduced to Give Judges Pay Adjustment

Legislation in support of the Judicial Conference's proposal on judges' compensation has been introduced in the House, H.R. 875, by Representatives Henry J. Hyde (R-IL) and John Conyers Jr. (D-MI), and in the Senate, S. 394, by Senators Orrin G. Hatch (R-UT), Patrick J. Leahy (D-VT), Thad Cochran (R-MS), Arlen Specter (R-PA), and Lauch Faircloth (R-NC).

In substance, the bills are essentially the Judicial Conference's proposals to provide judges with a one-time, catch-up pay adjustment of 9.6 percent, end the current linkage of the judicial, congressional, and Executive Schedule compensation, and repeal section 140 of P.L. 97-92, removing the current requirement that Congress affirmatively vote for cost-of-living increases for federal judges. As a result, judicial salaries would be adjusted automatically on an annual basis, in the same percentage amount as the rate of pay of federal employees under the General Schedule. 



(Photo right to left) AO Director Leonidas Ralph Mecham, Judge William G. Young (D. Mass), Judge John G. Heyburn II (W.D. Ky.) and FJC Director Judge Rya Zobel testified before the House Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, chaired by Representative Harold Rogers (R-KY).

For fiscal year 1998, the federal court system is seeking its smallest budget increase in 12 years, a representative of the Judicial Conference told a House appropriations subcommittee earlier this month. Nevertheless, the Judiciary continues to be a key link in the nation's justice system and must have the resources to do its job so that law-enforcement and crime-fighting efforts are successful.

See *Budget* on page 2

INSIDE

- Federal Courts' Caseload Continues To Grow pg. 4
- Home Confinement Proves Effective pg. 9
- FY98 Funding Shortfall Threatens Courthouses pg. 11

Budget continued from page 1

Judge John G. Heyburn II (W.D. Ky.), chair of the Judicial Conference Budget Committee, told the House Committee on Appropriations, Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, that the Judiciary has developed an FY98 budget request that has grown by only 7.8 percent over FY97 obligations. This modest increase is a reflection of the Judiciary's ongoing efforts to economize and improve its financial management process, said Heyburn. For FY98, which begins October 1, 1997, and concludes on September 30, 1998, the Judiciary is requesting an appropriation of \$3.6 billion.

Heyburn was accompanied at the hearing by Judge William G. Young (D. Mass.), co-chair of the Budget Committee's Economy Subcommittee; Leonidas Ralph Mecham, director of the Administrative Office and a member of the Conference's Executive Committee; and Judge Rya W. Zobel, director of the Federal Judicial Center.

Heyburn compared the Judiciary's appropriation to other government agencies. Over the last three years, Congress has increased funding for U.S. attorneys, the FBI, the DEA, and the INS by an average of 52 percent. During the same time, the Judiciary received a 29 percent increase, even though budgetary increases for these law-enforcement agencies directly affect the workload of the federal courts.

"Congress gives us more responsibility and more citizens ask the courts to resolve their disputes and problems," said Heyburn, referring to the continuing growth in appeals and in civil, criminal, and bankruptcy filings in FY96. "While the Judiciary cannot control its workload, it has made significant strides to work efficiently, thus limiting the resources required to handle the increasing workload." Heyburn cited the Judiciary's recent

Judiciary Fiscal Year 1998 Requested Funding

Courts of Appeals, District Courts and other Judiciary Services

(dollars in thousands)

Account	FY 1997 Estimate	FY 1998 Request	Proposed Increase	Percentage Increase
Salaries and Expenses	\$2,855,297	\$3,067,449	\$212,152	7.4%
Defender Services	\$333,198	\$354,482	\$21,284	6.4%
Fees of Jurors	\$68,400	\$71,707	\$3,307	4.8%
Court Security	\$141,462	\$170,973	\$29,511	20.9%

report, *Optimal Utilization of Judicial Resources* (www.uscourts.gov/optimal/toc.htm), which identifies numerous initiatives to enhance efficiency and productivity.

"The Judiciary's FY98 appropriations request includes only those funds necessary to continue our current workload (offset by efficiency and other savings), and to handle the additional responsibilities Congress has given us and the accompanying workload increase," Heyburn said. The 7.8 percent increase, which requires an 11.6 percent increase in appropriations, breaks down to 4.6 percent for current services (maintaining staffing, and funding for inflation, pay adjustments, and other costs related to existing workload), 2.8 percent to maintain current levels of service for uncontrollable workload increases, and .4 percent for the highest priority program needs. The latter two categories include increases in juror days for the almost 600,000 people who participate annually in the jury process; confirmation of additional judicial officers; additional deputy clerks required for bankruptcy filings that have increased 43 percent over FY95; increases in the number of court security officers; and additional pretrial services and probation officers to cope with the 120,000

individuals under supervised release, which is 15,000 more than the number of persons incarcerated in federal prison facilities.

The Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act, both enacted by Congress last year, are among the many new laws that are certain to increase court workloads. Legislation currently being considered by the 105th Congress, such as juvenile crime control measures and a victims' rights constitutional amendment, if enacted, also would impose new responsibilities on federal courts. "While the Judiciary cannot control its workload, we are endeavoring to better manage how efficiently we process our workload and are proud of our accomplishments in this area," Heyburn said.

These include

- **Doing more work with fewer people.** In recent years the Judiciary has requested funding for only 84 percent of the people needed to run the judicial system. Formulas determine how many people should be doing a job, and each court determines how best to use its limited resources.
- **Identifying ways to reduce rent costs.** In response to the Judiciary's need for adequate

courthouse facilities, the General Services Administration is building, renovating, and expanding court facilities nationwide, which will result in a significant increase in rental costs into the future. To moderate this budgetary pressure, the Judiciary has succeeded in trimming future rent costs by about \$12 million and is continuing to look for ways to achieve further savings.

- **Using automation and technology.** Automation and technology have been critical to the Judiciary's handling of a continuously growing workload while staffing the courts at a level below that determined to be necessary by workload formulas. Initiatives such as the Bankruptcy Noticing Center have produced significant savings while processing millions of notices. The Judiciary is currently exploring a number of initiatives to improve communications, make information more accessible to the public and the Judiciary, and improve courtroom proceedings. Videoconferencing is being used for the handling of routine and case-related administrative responsibilities, training, and courtroom proceedings. The Prisoner Civil Rights Videoconferencing Project is being implemented in 21 district courts, where it has the potential to result in cost savings. A few bankruptcy courts are using videoconferencing to conduct evidentiary and nonevidentiary proceedings between remote locations.

The Judiciary's budget requests appropriations for principal programs including:

- **Salaries and Expenses.** A total of \$3.06 billion is requested for this account. Salaries and



(Photo left to right) AO Director Leonidas Ralph Mecham, Judge John G. Heyburn II (W.D. Ky.) and Judge William G. Young (D. Mass) were briefed by staff on the Judiciary's budget needs prior to the House hearing.

expenses of the appellate, district, and bankruptcy courts, and probation and pretrial services offices account for most of the Judiciary's requested \$212.2 million over FY97 estimated obligations. Over 58 percent of the increase is needed to fund uncontrollable costs such as inflation and the annualized costs of additional personnel and space incurred in FY97. The current services portion of the request also includes rent and related costs associated with new space that the GSA will deliver in FY98.

The remaining increase will fund primarily the personnel needed to address increases for the following:

Court support personnel. \$69 million funds new court support employees and increases related to the growing workload in district, appeals, and bankruptcy courts, and an increase in the number of offenders for supervision—with a shift from relatively low-risk probation cases to high-risk violent offenders on supervised release. Even with these increases, courts will

continue to operate with only 84 percent of the necessary staff.

Judges. \$8.9 million for 13 new magistrate judges and 50 support staff positions.

Probation and pretrial services programs. \$5.1 million to place high-risk substance abusers in structured, in-patient programs; \$3.7 million to implement the mandatory drug testing provision of the Violent Crime Control and Law Enforcement Act of 1994; and \$1.3 million for contract in-patient mental treatment necessary to supervise persons found incompetent to stand trial or not guilty by reason of insanity.

- **Defender services.** A total of \$354 million to provide representation for indigent criminal defendants, including additional staff to handle a projected caseload of 85,300 CJA representations. Also included is a \$5 per in-court and out-of-court hourly rate adjustment for private panel attorneys in those districts not currently receiving a \$75 per

See Budget on page 4

Budget continued from page 3

hour compensation rate. \$600,000 would fund a new federal and a new community defender organization.

Fees of jurors. A total of \$71.7 million is required, which is \$3.3 million over FY97 obligations.


Court security. A total of \$171 million will provide funding for inflation, including costs associated with a wage labor rate increase for court security officers and other uncontrollable costs.

Administrative Office

Mecham testified on behalf of the Administrative Office, requesting funding to restore staffing and services to 1995 authorized levels. "Restoration of the 1995 staffing levels is critical to the ability of the AO to provide necessary support to the whole Judiciary," said Mecham.

"Without adequate staffing, the AO's efforts to improve the economy and efficiency of the Judiciary will be delayed and in some cases halted." Mecham highlighted the AO's service to the courts, especially its oversight and management support of law-enforcement functions that include a national contract for a home confinement alternative to incarceration, and a drug-testing program for people under supervision. In recent years the AO increased the courts' ability to meet their needs in flexible and cost-effective ways by decentralizing budget, management, and personnel functions. "The AO," said Mecham, "has an excellent track record for assisting the courts with technological advances, helping them to absorb some of the growth in work-load over the last several years." The AO continues its important function of support to the Judicial Conference, its committees, and all judges.

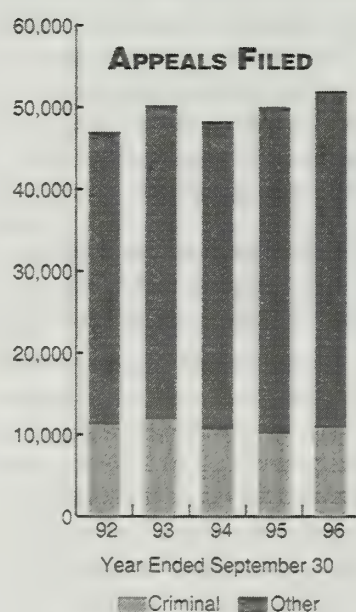
Federal Judicial Center

As director of the Federal Judicial Center, Zobel asked for a 5.3 percent increase over the FY97 appropriation. "The amount requested," said Zobel, "is about the same as our 1994 appropriation and a half-million dollars less than was available to us in 1992." The increase would fund adjustments to base for inflation and increased pay and benefits and enhance the FJC's ability to provide distance education. Zobel stressed that the FJC has for many years produced videocassettes and curriculum packages to reduce travel for its education programs. Recently, it has broadened its methods to on-line computer conferences, satellite broadcasts, and two-way video-conferences. Zobel said the FJC was determined to make much greater use of these approaches, although she noted there is no substitute to bringing people together for some types of education for both judges and supporting staff. 

Federal Courts' Caseload Continues Upward Spiral

Fiscal year 1996 saw case filings in federal courts increase across the board, according to statistics compiled by the Administrative Office. Filings in the courts of appeals grew 4 percent and total filings in U.S. district courts rose 8 percent. Bankruptcy filings exceeded the one-million mark and hit an all-time high. Despite these increases, no new Article III judgeships have been created in six years. In addition, the number of bankruptcy judgeships authorized and funded has not grown since 1993, although bankruptcy filings rose 24 percent from 1993 to 1996.

Courts of Appeals Filings Highest in History



In FY96, the number of appeals filed in the 12 regional courts of appeals rose 4 percent to 51,991. This

was an all-time high in filings, with eight circuits reporting increases. In FY96, 934 appeals were filed per authorized three-judge panel, up 35 from the preceding year. Consistent with an FY95 growth in criminal filings related to fraud and drugs in district courts, criminal appeals rose 7 percent last year. Fraud and drug case appeals grew 24 percent and 13 percent, respectively.

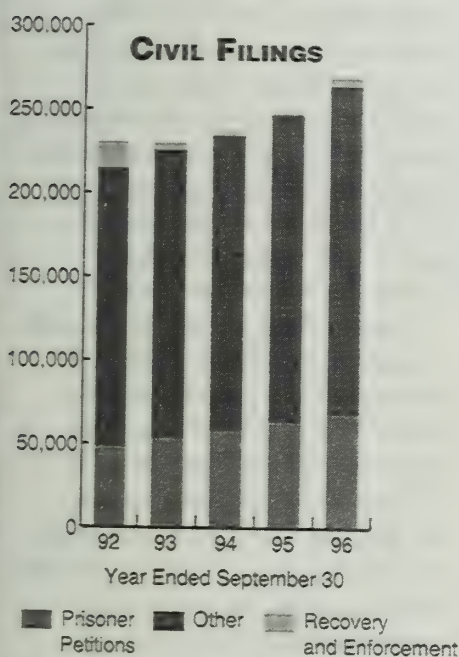
Civil appeals rose 6 percent in 1996, due largely to a 13 percent increase in prisoner petitions and a 17 percent increase in employment civil rights appeals. The increase in prisoner petitions may have been in part a response to the enactment of the Prison Litigation Reform Act and the Supreme Court's ruling in *Bailey v. United States*. The Prison Litigation Reform Act imposed filing fees that inmates may have sought to avoid by filing before the law was implemented. *Bailey* established

that, in order to apply enhanced penalties for using a firearm during a drug trafficking offense or crime of violence, a defendant must have used a gun while committing the offense, not merely have possessed the weapon. Inmates who received enhanced penalties may have filed for reductions in their sentences after this decision, and in FY96 there was a 39 percent jump in motions to vacate sentence.

There are 167 authorized judgeships in the 12 regional courts of appeals available to handle the record level of work; as of March 1, 1997, 26 of the judgeships were vacant.

District Courts Register Highest Filings in a Decade

In FY96, total filings in the U.S. district courts rose 8 percent, from 294,123 to 317,021. Caseload has not been this high since FY85, when filings peaked at 391,685.



Both civil and criminal case filings increased. Civil filings increased 8 percent, going from 248,335 to 269,132, largely because of a growth in private cases (i.e., those in which the U.S. government is not a party) concerning diversity of citizenship and federal question jurisdiction (i.e., the federal courts'

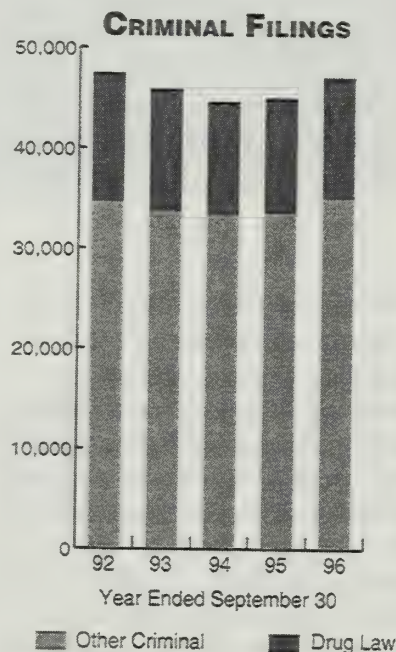
interpretation and application of the United States Constitution, acts of Congress, or treaties). A 56 percent rise in personal injury/product liability filings—a large number of which were breast implant cases—helped cause total diversity of citizenship filings to increase 18 percent. Federal question litigation increased due to an 82 percent increase in personal injury filings and a 16 percent rise in civil rights filings. Most of the personal injury filings were due to a number of oil refinery explosion cases in the Middle District of Louisiana. An increase in private civil rights filings is traceable to a 25 percent jump in civil rights employment filings.

Actions involving the United States as plaintiff or defendant also rose, climbing 13 percent from 43,158 to 48,755 cases. The number of filings with the United States as defendant increased 14 percent as a result of a 62 percent jump in prisoner petitions involving motions to vacate sentence. Actions involving the United States as a plaintiff increased 10 percent largely due to growth in filings involving defaulted student loans.

Filings of criminal cases and numbers of criminal defendants increased 5 percent in FY96, to 47,889 and 67,700, respectively. Criminal filings grew the most in drug and immigration offenses. Drug filings rose 5 percent to 12,092 as the number of defendants charged with drug offenses rose 4 percent to 23,861. This created a defendant-to-case ratio for drug offenses of 2:1, the highest for all offenses, which highlights the impact drug cases have on court workloads. At the same time, immigration case filings rose 40 percent to 5,526, thanks in large part to Operation Gatekeeper, an interagency program to prevent and deter illegal entry across the border between the United States and Mexico. Immigration cases, which accounted for 12 percent of all criminal filings in FY96, constituted 4 percent of crimi-

nal case filings only four years earlier.

For more than 50 years, the federal Judiciary has applied a system of weights to filings as a means of accounting for differences in the time required for district judges to resolve various types of civil and criminal disputes. In 1996, the total number of weighted filings per authorized judgeship was 472, up 24 from the 1995 level. There are 647 authorized district court judgeships, but 67 of these positions were vacant as of March 1, 1997, 19 of them for more than 18 months.



Persons Under Supervised Release Outnumber Those in Federal Prison

On September 30, 1996, the total number of supervised persons placed on conditional release was nearly 120,000. The total includes 88,966 persons under supervision in the probation system, a 4 percent increase over the number reported as of September 30, 1995, and 30,502 persons on pretrial supervision. In comparison, the federal prison population totals 96,000.

The overall growth in persons under supervision resulted from a 16 percent rise in persons serving terms

See Caseload on page 6

Judicial Caseload Indicators Fiscal Years 1992, 1995, and 1996

	1992	1995	1996	% Change Since 1995
U.S. Courts of Appeals				
Cases Filed	47,013	50,072	51,991	3.8
Cases Pending	35,799	37,310	38,888	4.2
U.S. District Courts				
Civil Cases Filed	230,509	248,335	269,132	8.4
Civil Cases Pending	218,824	234,008	252,753	8.0
Criminal Cases Filed	48,366	45,788	47,889	4.6
Defendants Filed	68,668	64,771	67,700	4.5
Criminal Cases Pending	34,078	28,738	31,128	8.3
U.S. Bankruptcy Courts				
Cases Filed	977,478	883,457	1,111,964	25.9
Federal Probation System				
Persons Under Supervision	85,920	85,822	88,966	3.7

Caseload continued from page 5

of supervised release, a period during which a person who has completed the full prison sentence mandated by federal sentencing guidelines is under supervision by federal probation officers in the community. Persons serving terms of supervised release constituted 52 percent of all persons under supervision as of September 30, 1996, making this the first fiscal year that supervised release cases accounted for a majority of all persons under supervision. Probation imposed by district judges and magistrate judges accounted for 38 percent of the population under supervision.

Bankruptcy Courts See Filings Pass Record One Million Mark

The number of bankruptcy petitions filed reached an all-time high, soaring 26 percent to 1,111,964 in FY96. In comparison, for FY95, 883,457 bankruptcies were filed. A total of 326 bankruptcy judgeships

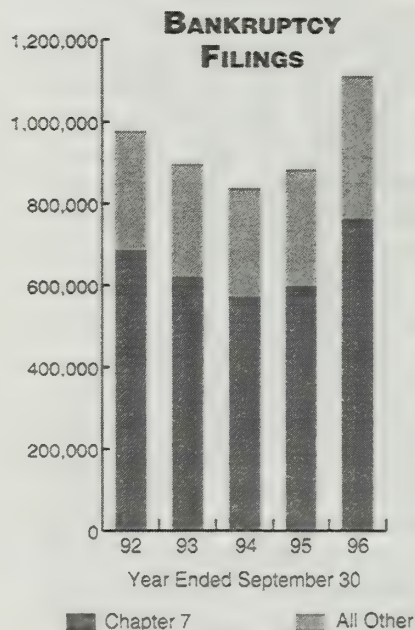
are authorized and funded to handle the increasing workload.

Filings rose in all 94 districts, with 80 courts experiencing increases greater than 20 percent. The Central District of California remained the district reporting the

largest number of bankruptcy filings in the country with 97,311. The Northern District of California, the Northern District of Illinois, the District of New Jersey, the Northern District of Georgia, and the Middle District of Florida all showed over 30,000 bankruptcy filings in this period. The Eastern District of California neared that mark.

In total filings, there were 761,652 Chapter 7 bankruptcy filings, an increase of 27.3 percent over the 598,250 filings in FY95. The next largest group of filings was Chapter 13 filings at 336,615, an increase of 23.9 percent over the 271,650 filings in FY95. Chapter 11 filings remained relatively stable, dropping from 12,639 in FY95 to 12,554 in FY96. Chapter 12 filings rose in this period, from 883 in FY95 to 1,096 in FY96.

Growth occurred primarily in non-business filings, which rose 27 percent after an increase of 6 percent in 1995. Business filings totaled 53,520. Nonbusiness filings totaled 1,058,444.



MARCH

20-21 Thursday-Friday
Advisory Committee on Civil Rules

APRIL

CALENDAR DATES FOR
THE THIRD BRANCH

Vol. 29 Number 3 March 1997

3-4 Thursday-Friday
Advisory Committee on Appellate Rules

7-8 Monday-Tuesday
Advisory Committee on Criminal Rules

14-15 Monday-Tuesday
Advisory Committee on Evidence Rules

14-16 Monday-Wednesday
Workshop for Bankruptcy Judges II

PLEASE POST

VACANCY ANNOUNCEMENTS THE THIRD BRANCH

Vol. 29 Number 3 March 1997

CHIEF PROBATION OFFICER, District of Minnesota

Applications are begin accepted for the Chief Probation Officer position in the District of Minnesota. Salary: JSP 14-17. For additional information, contact Francis E. Dosel, Clerk, U.S. District Court, at (612) 290-3944 or mail a cover letter and resume to Chief Judge Paul A. Magnuson, 708 U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101. Closing date is April 25, 1997.

ASSISTANT CIRCUIT EXECUTIVE FOR AUTOMATION AND TECHNOLOGY, Tenth Circuit

The Circuit Executive's Office of the Tenth Circuit seeks a responsible, resourceful, and highly motivated individual to manage a growing staff of 11 automation specialists. The position is located in the Circuit Executive's office in Denver, Colorado, with responsibilities covering a six-state area. Candidates should possess at least three years of automation management experience, and a comprehensive knowledge of UNIX and PC network operating systems. Excellent organizational, communication, and interpersonal skills are essential. A degree in computer science or a related field, advanced training in business or organizational management and/or court experience is desired. Send letter of application, resume, and salary history by April 15, 1997, to Circuit Executive, Tenth Circuit Courts, 1823 Stout Street, Denver, CO 80257. Full position description available by calling Lori Strode at (303) 844-2073.

CHIEF DEPUTY CLERK-OPERATIONS, Northern District of Georgia

The incumbent will assist the Clerk of Court in the bankruptcy court in organizing and managing the operations section of the clerk's office to ensure efficient delivery of the following services: case administration, courtroom services, case intake, records management, statistical reporting, quality control, and training. Mandatory qualifications include five years of progressively responsible administrative, technical, professional, supervisory or managerial experience; a thorough knowledge of the basic concepts, principles, and theories of management in at least one but preferably two or more of the functional areas of operations support. At least one year of this experience must be at or equivalent to the CL-30 (JSP 14) level. A candidate must demonstrate experience and the ability to manage multiple people and projects with competing resource requirements; select, develop, train, and manage a professional staff; communicate in writing (drafting and revising reference manuals and policies); and communicate orally to explain and support office policies. A bachelors or masters degree in public, business or judicial administration, or another related field; thorough knowledge of the Bankruptcy Code and Rules, and an understanding of the operational processes in a court environment; experience in the use of automated case management systems; excellent interpersonal skills, a professional demeanor, mature, responsible, reliable, detail oriented and organized; and the ability to take initiative and manage in a team-based environment are desirable. Salary: CL-31 - \$59,914 - \$97,378. Qualified persons should submit resume w/cover letter to U.S. Bankruptcy Court, P.O. Box 3349, Atlanta, GA 30302. Applications will be reviewed after March 31, 1997, but the position will remain open until filled.

CHIEF DEPUTY CLERK-ADMINISTRATION, Northern District of Georgia

The incumbent will assist the Clerk of Court in the bankruptcy court in organizing and managing the administrative section of the clerk's office to ensure efficient delivery of the following services: office automation, budget, financial management, space and facilities management, human resources management, and procurement. Mandatory qualifications include five years of progressively responsible administrative, technical, professional, supervisory or managerial experience. At least one year of this experience must be at or equivalent to the CL-30 (JSP 14) level. A candidate must demonstrate experience and the ability to manage multiple people and projects with competing resource requirements; select, develop, train, and manage a professional staff; communicate in writing (drafting and revising reference manuals and policies); and communicate orally to explain and support office policies. A bachelors or masters degree in public, business, or judicial administration or information systems management / computer science or another related field; experience in Novell network administration; the use of Microsoft application software, Access, WordPerfect for Windows, ccMail, Lotus Organizer; excellent interpersonal skills, a professional demeanor, mature, responsible, reliable, detail oriented and organized; and the ability to take initiative and manage in a team-based environment are desirable. Salary: CL-31 - \$59,914 - \$97,378. Qualified persons should submit resume w/cover letter to U.S. Bankruptcy Court, P.O. Box 3349, Atlanta, GA 30302. Applications will be reviewed after March 31, 1997, but the position will remain open until filled.

Landmark Revision of Appellate Rules Nearly Complete


The comprehensive style revision of the Federal Rules of Appellate Procedure has received a largely favorable public response, according to Judge James K. Logan (10th Cir.), chair of the Judicial Conference Advisory Committee on Appellate Rules. The nine-month public comment period, which closed December 31, 1996, was the latest step in the committee's efforts to review the appellate rules from top to bottom and propose revisions to improve their clarity, consistency, and readability. The advisory committee began its project in 1994.

The advisory committee will meet on April 3-4, 1997, to put the final touches on the revised rules, which

will be submitted to the Committee on Rules of Practice and Procedure (Standing Rules Committee) in the summer. The rules will go to the Judicial Conference in the fall for transmission to the Supreme Court. If the Court approves the revisions, and Congress takes no action otherwise, the changes will take effect December 1, 1998.

Said Logan, "The revised rules are simpler, clearer, more consistent, and easier to read." In a unique presentation for a rules publication, the improvements were vividly shown in a side-by-side format comparing the present text of the rules with the proposed new text. "Ambiguities and inconsistencies that have inevitably crept into the appellate rules since enactment in 1976," said Logan, "were identified and eliminated." The amendments were not intended to make any substantive changes, however, unless otherwise specified.

The Standing Rules Committee's Style Subcommittee, chaired by Judge James A. Parker (D. N.M.), also was involved in the project, working in tandem with the advisory committee. According to Judge Alicemarie H. Stotler (C.D. Cal.), chair of the Standing Rules Committee, "Each word and punctuation mark was scrutinized and the impact of every change on other parts of the rules was measured. But the final product appears to justify the effort, and the new rules will mark the way toward more consistent rulemaking overall."

The revision of the appellate rules completes the first step of a long-term plan to re-examine all the procedural rules. The Advisory Committees on Civil and Criminal Rules will begin assessing the reaction of the bar and bench on the revised appellate rules and decide whether to begin to redraft their own rules. 

JUDICIAL MILESTONES

Appointed: Jane Cooper-Hill, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Texas, February 10.

Appointed: Paul W. Grimm, as U.S. Magistrate Judge, U.S. District Court for the District of Maryland, February 5.

Appointed: Alia Moses Ludlum, as U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, January 24.

Appointed: Thomas J. Shields, as Magistrate Judge, U.S. District Court for the Southern District of Iowa, January 14.

Appointed: Paul A. Zoss, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Iowa, January 27.

Senior Status: Judge Conrad K. Cyr, U.S. Court of Appeals for the First Circuit, January 31.

Senior Status: Judge Roger J. Miner, U.S. Court of Appeals for the Second Circuit, January 1.

Senior Status: Judge Elizabeth V. Hallanan, U.S. District Court for the Southern District of West Virginia, December 1, 1996

Retired: Magistrate Judge Joseph W. Bartunek, U.S. District Court for the Northern District of Ohio, February 16.

Retired: Magistrate Judge Clarence C. Goetz, U.S. District Court for the District of Maryland, February 4.


Retired: Magistrate Judge James E. Kenkel, U.S. District Court for the District of Maryland, February 17.

Retired: Bankruptcy Judge Randolph F. Wheless Jr., U.S. District Court for the Southern District of Texas, January 31.

Deceased: Senior Judge Sidney M. Aronovitz, U.S. District Court for the Southern District of Florida, January 8.

Deceased: Senior Judge John R. Bartels, U.S. District Court for the Eastern District of New York, February 13.

Deceased: Senior Judge Oren Harris, U.S. District Court for the Western District of Arkansas, February 5.

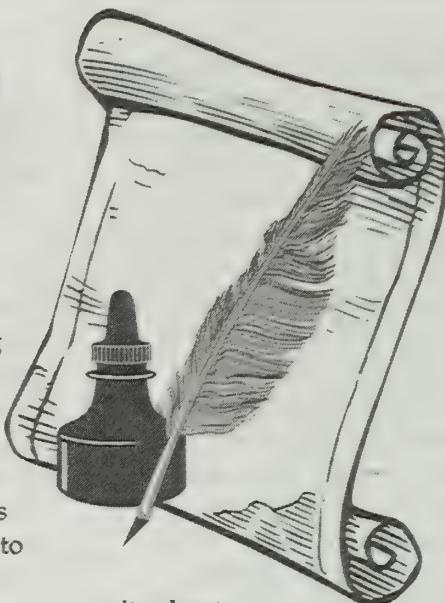
Deceased: Senior Judge Fred J. Nichol, U.S. District Court for the District of South Dakota, December 31. 

Legal Writing Raises Concerns, Need for Caution


That age-old advice to budding novelists "Write what you know best," may not always be the best counsel for judges. Writing activities are permitted under the Code of Conduct for United States Judges and law-related writing is to a great extent encouraged. Judges are cautioned on writing about current or impending cases, unless it is "a scholarly presentation made for purposes of legal education," and judges presumably may write about cases they have handled after final disposition of those cases.

Still, the Judicial Conference Committee on Codes of Conduct advises that "in writings referring to specific cases which the judge has decided, . . . even after their final disposition, the judge should be particularly careful to avoid possible exploitation of his or her judicial position. In any reference to a criminal case he [or she] should consider also whether his [or her] comments might afford a basis for collateral attack on the judgment. In all cases he [or she] should avoid sensationalism and comments which may result in confusion or misunderstanding of the judicial function or detract from the dignity of his [or her] office."

Writing on legal topics also can raise concerns about exploitation of the judicial office. Inevitably, judges will draw on their experiences on the bench when they write about the law and legal procedure, and this practice is generally permitted. For example, judges may use illustrations and anecdotes from their judicial experiences, and they may



write about the idiosyncracies of practice before their particular courts. However, the Committee on Codes of Conduct distinguishes between writing for compensation "when the subject matter is how to practice before the judge's own court," and writing for compensation "on other legal topics with respect to which the judge does not occupy a unique position by virtue of his or her own particular judgeship." While the latter practice is acceptable, the former is considered inappropriate. According to the committee, "For a judge to derive financial benefit, over and above the judicial salary, from the publication and sale of a book about his or her own court . . . would constitute exploiting the judicial position for financial gain. It could also permit others—the publisher of the book, the sponsor of the seminar—to benefit from the judge's exploitation of his or her judicial position."

In the committee's view, a judge should not charge for "writing a book where the principal focus is on how to practice before the judge's court and where, as a necessary result, a substantial part of the value and appeal to the audience arises from the fact that the . . . author is an 'insider.'" 

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Please direct all inquiries and address changes to *The Third Branch* at the above address.

JUDICIAL BOXSCORE

As of March 1, 1997

Courts of Appeals		
Vacancies		26
Nominees		9
District Courts		
Vacancies		67
Nominees		16
Court of International Trade		
Vacancies		2
Nominees		0
Courts with "Judicial Emergencies"		24

Home Confinement Proves Effective in Dollars and Sense

Home confinement, when used by the federal courts as an alternative to pretrial detention or post-conviction incarceration, is proving not only effective, but also cost efficient.

In the federal system, home confinement refers to any judicially or administratively imposed condition requiring a person to remain in his or her residence for any part of the day. Although the use of electronic equipment, usually involving an ankle bracelet transmitter to monitor a participant, is preferred, monitoring also may be by frequent home visits or periodic telephone calls. No matter what the method, home confinement can be an alternative to detention or incarceration.

"We've used electronic monitoring for the last five years in this district," says David E. Johnson, chief probation officer for the District of Maryland. "It's quick to set up and very effective incapacitation, both as a deterrent and as punishment, because it is very confining. The people essentially are in community custody."

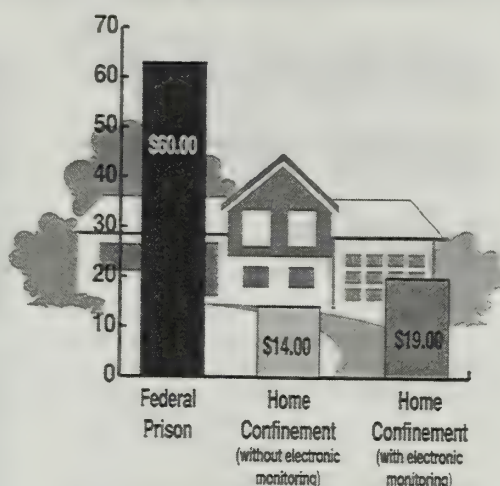
If home confinement is meant to minimize risk to the public and to re-integrate the offender into a law-abiding lifestyle, or in the instance of pretrial defendants, to assure appearance, then the program is effective. A program participant spends about 120 days in home confinement. Preliminary data compiled by the Administrative Office show that only about 9 percent of home confinement participants violate their confinement. Less than 2 percent of participants commit new criminal offenses during their terms.

"Home confinement," says Thomas Henry, chief pretrial services officer for the District of New Jersey, "is not jail. As one of our supervision tools, it helps to monitor a defendant's activities in the community and restricts movement. Defendants need permission to go out and when they do leave the house, they need to document who they see or meet. Sometimes, just the defendant's knowledge that the court is keeping tabs is enough to make the supervision work."

Home confinement, whether or not electronically monitored, also costs less than incarceration. In 1995 the estimated daily cost of incarceration of a post-conviction offender was over \$60 in a federal prison and nearly \$40 in a federal half-way house. The average daily cost for a pretrial defendant in a federal detention center also was over \$60. By comparison, the average daily cost of home confinement was about \$14 for supervision, with an additional \$5 for electronic monitoring.

Only 4 percent of the 120,000 pretrial defendants and post-conviction offenders under supervision are in the home confinement program. (This is in contrast to the 96,000 federal prison population.) The number of post-conviction offenders in home confinement is limited by the nature of federal sentencing guidelines, which generally ensure that 75 percent of all persons convicted in federal courts receive prison sentences. The number of pretrial defendants in home confinement also was limited by the statutory requirement that defendants be released with the least restrictive conditions necessary to reasonably assure future court appearance and community safety. Growth in home confinement may occur not at the initial sentencing stage, but as an intermediate sanction for offenders who are already on probation or supervised release. Johnson says, "We like electronic

Daily Cost Per Person



monitoring for cases where the sentencing guidelines require either home confinement or a combination of electronic monitoring and prison time because it lets people continue to work and support their dependents. And in cases where it is used as a means of early release from prison, it allows people to make the transition into the community in a controlled atmosphere."

While home confinement is proving effective, it is not a cure-all. Supervision of participants in home confinement is labor-intensive and time-consuming. More frequent home and community visits are required by officers. Says Henry, "Supervision doesn't stop at 5:00 p.m. on Friday. Our officers may be answering pages all night long, all week long, notifying them that a defendant has moved outside the range of the monitor." Each alert by the electronic monitoring device must be checked with officers handling an average of 10 calls a day. The electronic monitoring equipment rarely fails, so most calls are the result of participant behavior. "Having officers on duty all the time may be unique in the court system, but it fits in with probation work," says Johnson, "where officers are expected to be mobile, out in the community, and involved."

GSA's Head Brings Business Perspective to Service

David J. Barram has been acting administrator of the General Services Administration (GSA) since March 1996. He had previously been deputy secretary of commerce at the U.S. Department of Commerce from 1993. Before entering government service, he worked in the private sector, mainly with high technology firms.



GSA Acting Administrator David J. Barram.

Q: You became acting administrator of the General Services Administration in 1996. What do you see as GSA's role and mission?

A: GSA's role and mission are about providing great work environments for federal agencies and for their federal workers. These work environments will be very different as we do more and more work in new kinds of work settings. The future will feature more work away from the traditional office and yet more ability to be connected wherever we are. Technology will be both a driving force and the means to flourish in those new environments.

GSA provides important services to the federal community: buildings, supplies, telecommunications, policy. We accept the challenge to perform those services in a way that thrills the customer. We offer customers choice and thereby challenge ourselves to a competitive standard. We believe GSA can be a model agency in the federal government, exhibiting the best spirit of reinvention, and continually raising the bar of excellence.

Q: Your background is in both government—you were deputy secretary at the Department of Commerce—and private industry, with such corporations as Hewlett Packard and Silicon Graphics. What do you bring to GSA from those two very different areas?

A: I bring to this job the perspective of a business person who matured in the exciting, technological, complex and future-oriented world of Silicon Valley. I believe deeply that technology is a tool that changes behaviors and gives people new ideas about how they can do their work better. I believe that leadership means letting people thrive, creating visions that bring them together, and removing obstacles that get in the way.

My 2½ years at Commerce were tremendously valuable. I learned about the peculiar constraints that federal workers labor under, and I gained a huge respect for the technical expertise of the career employees. As part of the President's Management Council, I saw the complexity that the combination of large size and a process mentality imposes on organizations. Those experiences certainly affect my thinking as we make a fundamental change in the culture at GSA.

I believe that with a clear vision, enthusiasm, an ever higher standard of excellence, and a sense of community, this government agency (GSA) can be a powerful and important steward of the public trust.

Q: GSA recently discovered a shortfall in rental revenues that will mean no new construction in 1998. How will federal court-houses slated for construction in 1998 be affected? When is it expected federal courthouse construction will be back on track?

A: It basically causes a one-year slippage in our court construction. They (the Judiciary) have a five-year plan, so it will move the projects back a year. We expect the program will resume in 1999.

It is important to mention that the Federal Building Fund (FBF) cannot generate sufficient money to fund new construction. It hasn't in recent years and generally cannot. We expect most of the FBF to be used for renovation of our 140 million

"We need to continue to work on making this good relationship even better. We need to continue sharing information and mutually solving problems, and we are doing that more than ever."

square-foot inventory. So, we expect new construction to be funded primarily by appropriations to the fund.

Q: Normally if a construction project is delayed, construction costs may increase 3 to 4 percent in a year's time. How will GSA cope with this?

A: First, we could be in a market where construction prices haven't gone up. That's certainly not a sure thing. In that case, there would be no impact. However, if the price goes up in the market we will submit the higher amount in the 1999 budget request to OMB.

Q: A new rent program has been proposed. In light of the shortfalls, will this new program be inaugurated?

A: The shortfall will not impact that decision. We are changing the way we price our space. However, we still need final OMB approval to make the change. We're coming up with a more rational way of charging for space. It's simpler and more easily understood by our clients, and we think it will give us a more solid revenue base to run our buildings. In effect, we are mirroring private sector practices. We will also enter into an agreement with an agency that will give them a fixed rate for a set period of time. We are becoming more private-sector-like in our arrangements with client agencies. The Administration's National Performance Review created the climate for this type of change to occur.

Q: How would you characterize the relationship between the Judiciary and the GSA at the

present time? What, if anything, would you change in this relationship?


A: The relationship is probably the best it has ever been, from our perspective. This is, in part, because about two years ago, we put in place the courthouse management group. The group provides a day-to-day link with the judicial system that we lacked before.

The courts, in the past year or so, have agreed to prioritize their projects, and they now have a five-year plan in place. We've worked with them on this plan, which gives the courts, GSA, and Congress a sound basis for making decisions. We know what their priorities are, and we agree with them because they seek our input.

We also participate with their space and facilities committee meetings. Generally, we have a greater partnership. We need to continue to work on making this good relationship even better. We need to continue sharing information, and mutually solving problems and we are doing that more than ever.

Q: How do you view the U.S. Courts Design Guide?

A: I think we agree with the courts that it needs some fine tuning. But, we basically think it produces a quality building that is not excessive and will serve the needs of the courts and GSA for 50 to 100 years. That is the kind of structure we are constructing. Over the years, the design guide has become better and better.

The issue now is more over things like sharing of courtrooms. Congress would like to see more sharing. That could change the number of courtrooms needed and the size. 

FY98 Funding Shortfall Threatens Federal Courthouses

Failure to fund fiscal year 1998 courthouse construction and renovation projects could seriously disrupt the courthouse construction process and, in the end, result in increased costs.

"Delays in funding can increase construction costs and, therefore, necessitate changes in the original design so that the project stays within the approved budget," said Judge John R. Gibson (8th Cir.), a member of the Judicial Conference Committee on Security, Space and Facilities, in testimony submitted earlier this month to the House Committee on Transportation and Infrastructure, Subcommittee on Public Buildings and Economic Development.

The anticipated FY98 funding delay results from a projected shortfall in the General Services Administration (GSA) Federal Buildings Fund, and does not reflect on specific courthouse projects for which funding is sought. Due to the shortfall, GSA had indicated it would not request funding for a number of projects ready for contract award in FY98. When this became known in December 1996, Administrative Office Director Leonidas Ralph Mecham wrote to the Director of the Office of Management and Budget (OMB) detailing the adverse impact on the Judiciary should the President's FY98 budget not include funding for construction projects. Mecham said if the funding were not included, the Judiciary would need to resort to expensive temporary space to replace currently overcrowded, unsafe space and that delays could

See Shortfall on page 12

Shortfall continued from page 11

translate into escalating construction costs, the loss of sites, and the redesign of projects, with their attendant costs.

Each courthouse project in the Judiciary's five-year plan either has, or soon will run out of space for judges and/or has serious security and safety concerns. "The Judiciary believes it is necessary for the courthouse construction and renovation program to continue in an orderly manner so that it can house adequately the judges and court staff needed to handle its increasing workload," Gibson told the subcommittee.

Among projects needing funding are those in Laredo, Texas; Jacksonville, Florida; Greenville, Tennessee; Savannah, Georgia; Wheeling, West

Virginia; and Denver, Colorado, so that construction contracts can be awarded in FY98.

Necessary repair and alteration work also would not be done due to the projected shortfall in FY98. Among the courthouses affected by this are the courthouse in Anchorage, Alaska, which has serious building systems problems and roof leaks; the project in Pittsburgh, Pennsylvania, which involves expansion of the court so that an entirely new facility does not have to be constructed; and the building for the court of appeals in New York City, which needs extensive electrical system work.

GSA has said that the shortfall was due to a misjudgment of the impact of federal downsizing on space inventory. To bring revenues and obligations back into balance,

the GSA's Commissioner of the Public Buildings Service, Robert A. Peck, asked the subcommittee for \$680.5 million in new obligational authority to fund projects and programs authorized in previous years.

Pending the results of the Judicial Conference's review of the *U.S. Courts Design Guide*, the House Subcommittee on Public Buildings and Economic Development held up authorization of several courthouse projects already authorized by the Senate and for which funds were appropriated in 1997. At its March meeting, the Conference approved a number of Guide changes and discussions are now in progress with House members to determine if this action satisfies the subcommittee's concerns.

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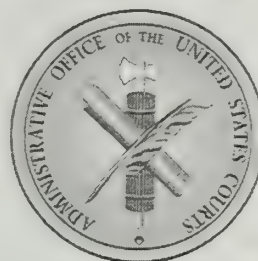
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Judicial Conference Meets, Seeks New Judgeships for Growing Workload



Attorney General Janet Reno greets Judge Wm. Terrell Hoages (M.D. Fla.) and other members of the Executive Committee.

The Judicial Conference voted at its March meeting to transmit to Congress a request to create new appellate, district, and bankruptcy judgeships. Judges at all three levels are facing rapidly increasing

workloads. No new Article III judgeships have been created since 1990, and the number of bankruptcy judgeships was last increased in 1992.

The Conference will ask Congress to create 12 permanent and five temporary court of appeals judgeships. The 12 regional courts of appeals handled nearly 52,000 new cases in fiscal year 1996, a new all-time high. As of April 1, 25 of the 167 authorized appellate judgeships were vacant. The Conference also voted to ask Congress to create three new district court judgeships, in addition to the 33 judgeships approved by the Conference in September 1996. There currently are 70 district court vacancies out of the 647 authorized judgeships. In FY 96, total filings in U.S. district courts reached the highest level in the last 10 years.

At its meeting, the Conference approved a process to be incorporated into its routine biennial surveys of district court judgeship needs that will take into account the possible need to eliminate Article III

See Conference on page 2

Judicial Vacancies and Confirmations: Past and Future

Last month, the Senate confirmed Merrick Garland to sit on the U.S. Court of Appeals for the District of Columbia and Colleen Kollar-Kotelly for the U.S. District Court for the District of Columbia. They are the first confirmations of Article III judgeships since August 1996, during the 2nd session of the 104th Congress. Garland is the first appellate judge confirmed since January 2, 1996. A look at recent past Congresses shows that while an average of 54 judges are appointed per session, in some sessions the total number of confirmations per session has been as low as 20 (2nd session of the 104th Congress) and as high as 101 (2nd session of the 103d Congress).

In the 102nd Congress, the number of vacancies was initially high, following the addition of 11 court of appeals and 74 district court judgeships with the 1990 judgeship bill, P.L. 101-650. By the last months of the 103rd Congress, the number of judicial vacancies had fallen into the double digits, where they have remained.

See Confirmations on page 4

INSIDE

DOJ Increases Affect Judiciary pg. 5
1997 Director's Awards Recognize Achievements pg. 6
A Look At Defender Services pg. 10

Judgeship Bills on the Hill

Representatives Henry J. Hyde (R-IL) and John Conyers, Jr. (D-MI) have introduced H.R. 977, a bill that will make five temporary district judgeships permanent and extend the time limit on six temporary judgeships. The 1990 judgeship bill, P.L. 101-650, fixed expiration dates for certain judgeships. If this new legislation is not enacted some of the judgeships will be lost. In addition, on March 21, Leonidas Ralph Mecham, Secretary to the Judicial Conference, transmitted to Congress the Conference's new request for the creation of Article III judgeships.

judgeships or to recommend that vacancies not be filled. The Conference determined that as a matter of policy it will not recommend elimination of judgeships except in circumstances where the situation in a court is unlikely in the foreseeable future to support the need for the current number of judgeships. It is far too difficult to obtain congressional approval of needed judgeships to recommend eliminating positions that may be necessary in the future, if not the present. In identifying courts where it may be appropriate to recommend not filling a vacancy, the Conference will model the approach for Article III judgeships on that currently used for bankruptcy judgeships.

The Conference also voted to transmit to Congress proposed legislation to create 18 additional bankruptcy judgeships. In 1996 bankruptcy filings for the first time topped 1 million.

In other action, the Conference:

- Approved a series of amendments to the *U.S. Courts Design*



The Executive Committee of the Judicial Conference met with the Attorney General prior to the Conference's March meeting: (left to right) Chief Judge Glenn L. Archer, Jr. (Fed. Cir.), Chief Judge Lloyd D. George (D. Nev.), Judge Clarence A. Brimmer (D. Wyo.), Chief Judge Henry A. Politz (5th Cir.), Deputy Attorney General Jamie S. Gorelick, Attorney General Janet Reno, Judge Wm. Terrell Hodges (M.D. Fla.), Chief Judge Richard S. Arnold (8th Cir.), Chief Judge Michael M. Mihm (C.D. Ill.), Leonidas Ralph Mecham, Director, AOUSC. (Photo credit: DOJ)

Guide, following a year and a half of review by private sector architects, engineers, construction contractors, advisory groups of judges and court staff, and the General Services Administration. Among the amendments is a provision that emphasizes the important role a project's budget, long-term durability, and maintenance costs play in determining the level and type of interior finishes in new courthouses and in renovations. Another provision encourages the use of and reaffirms the need for shared use of space of all court offices, such as conference and training rooms.

- As a cost-savings measure, strongly encouraged courts to enter into shared facilities arrangements with state and local governments, or other entities to reduce space rental and costs.

- Adopted a policy on courtroom sharing that balances the essential need for judges to have an available courtroom to fulfill their responsibilities with the economic reality of limited resources. The policy provides for one courtroom for each active district court judge. In addition, with regard to senior judges who do not carry caseloads requiring substantial use of a courtroom and to visiting judges, the policy sets forth a non-exclusive list of factors for circuit judicial councils to consider when determining the number of courtrooms needed at a facility. Among the factors to be considered are an assessment of workload anticipated to be carried by a senior judge and the number of years a senior judge is likely to carry such a caseload as well as an evaluation of courtrooms throughout the district. Courts are encouraged

to provide for flexible and varied use of courtrooms.

- Received an update on judicial compensation. Federal judges' salaries have been frozen since 1993. Judge Barefoot Sanders, chair of the Conference's Judicial Branch Committee, reported that Representatives Henry J. Hyde (R-IL) and John Conyers Jr. (D-MI) have introduced H.R. 875, and Senators Orrin Hatch, Patrick Leahy, and others have introduced S. 394. Both bills contain the Conference-endorsed proposal for increasing judges' pay. Specifically, the bills provide a catch-up pay adjustment of 9.6 percent; delinks judges' pay from the Executive Schedule and congressional pay and links the annual pay adjustment of judges to changes in the rates of pay of the General Schedule; and repeals section 140 of P.L. 97-92, which provides that no salary increase can be given to judges without specific legislative action.

- Received a briefing on the Judiciary's fiscal year 1998 budget request. Judge John G. Heyburn, II, chair of the Conference's Budget Committee, reported that the Judiciary is requesting the smallest funding increase in 12 years. Over the last three years, Congress has increased funding for U.S. attorneys, the FBI, the DEA, and the INS by an average of 52 percent. During the same time, the Judiciary received a 29 percent increase. Heyburn testified on March 6 before the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies. The Senate Appropriations subcommittee was scheduled to conduct its hearing for the Judiciary on April 17.


Conference Honors Chief Judge Arnold



Chief Judge Richard S. Arnold (8th Cir.) receives the Judicial Conference resolution from Chief Justice William H. Rehnquist.


The Judicial Conference, at its March meeting, passed a resolution recognizing with "appreciation, respect and admiration," Chief Judge Richard S. Arnold (8th Cir.) as chair of the Committee on the Budget from November 20, 1987, to December 31, 1996. The resolution read, in part, "He has gained the confidence and respect of those with whom he has come in contact in all three branches of government. We pay tribute and extend our deep appreciation for Chief Judge Arnold for his unwavering commitment to the administration of justice and service to the federal Judiciary." Arnold, in addition to serving on the Budget Committee, also served on the Ad Hoc Committee on Regulatory Reform Legislation from 1981 to 1984, the Subcommittee on Judicial Improvements from 1983 to 1987, and he is currently a member of the Executive Committee.

- Approved the following names for presentation to the President for appointment, subject to the advice and consent of the Senate, to fill two vacancies on the U.S. Sentencing Commission: for reappointment, Judge A. David Mazzone (D. Mass.); and for reappointment to succeed Judge Julie Carnes (N.D. Ga.), who does not seek reappointment, Judge Diana E. Murphy (8th Cir.) and Judge Donald E. O'Brien (N.D. Iowa).
- Authorized the Committee on Criminal Law, in consultation

with the Federal-State Jurisdiction Committee and the chair of the Executive Committee, to maintain contact with Congress as it deliberates enactment of a victims' rights constitutional amendment to inform how it may impact the administration and costs of operating the federal courts. The Judicial Conference takes no position on the amendment because the enactment of a constitutional amendment to protect crime victims is a legislative decision. 

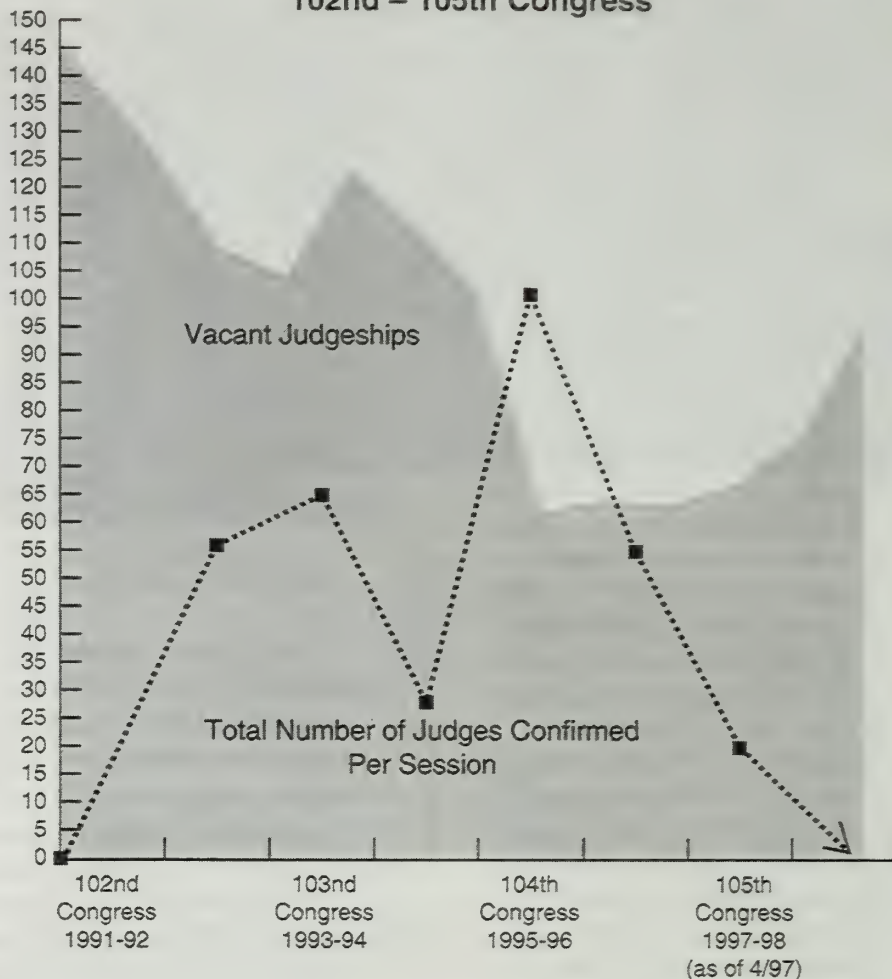
Confirmations continued from page 1

However, vacancies as of April 1, 1997, stood at 97, and it appears likely that vacancies will top 100 in the near future. The 97 empty seats have been vacant for an average of 15 months, with some in existence for as many as 76 months. Twenty-three of the vacancies fall into the judicial emergency category, having been vacant for 18 months or longer. It is projected that if no vacancies are filled and all eligible Article III judges take senior status, there will be approximately 275 vacancies at the appellate and district court levels by the year 2001, leaving over one-third of the federal judgeships empty.

The pace at which the Executive Branch is submitting judicial nominees has slowed. As of April 4, 1997, there were no nominees for 73 percent of the existing judicial vacancies. It currently takes an average of 618 days to nominate a judge once a vacancy occurs. During the Clinton presidency, the Senate has taken an average of 91 days from the time of nomination to confirm a nominee. 

Vacancies and Confirmations of Article III Judges

102nd – 105th Congress




Legislation Signed on Victim Allocation

The Victim Allocation Clarification Act of 1997, P.L. 105-6, was signed into law by the President on March 19. The law prohibits a U.S. district court from ordering any victim of an offense excluded from the trial of a defendant accused of that offense because the victim may, during the sentencing hearing, make a statement or present any information as to the effect of the offense on the victim and the victim's family. The law specifically applies to all cases pending at the time of enact-

ment. The bill passed the House in a 418 to 9 vote and in the Senate by unanimous consent.

Representative Bill McCollum (R-FL), the chief sponsor of the legislation, called the bill, "an important clarification of the rights that victims have in federal criminal trials." However, Representative Robert C. Scott (D-VA) argued that the bill "violates the constitutional framework of separation of powers and it is undue retroactive interference with a ruling in a pending criminal case. It is an obvious attempt to obtain legislatively a ruling in the Oklahoma bombing case different from the one already entered into by a federal judge according to the law and according to the facts in the

particular case and twice sustained on appellate review."

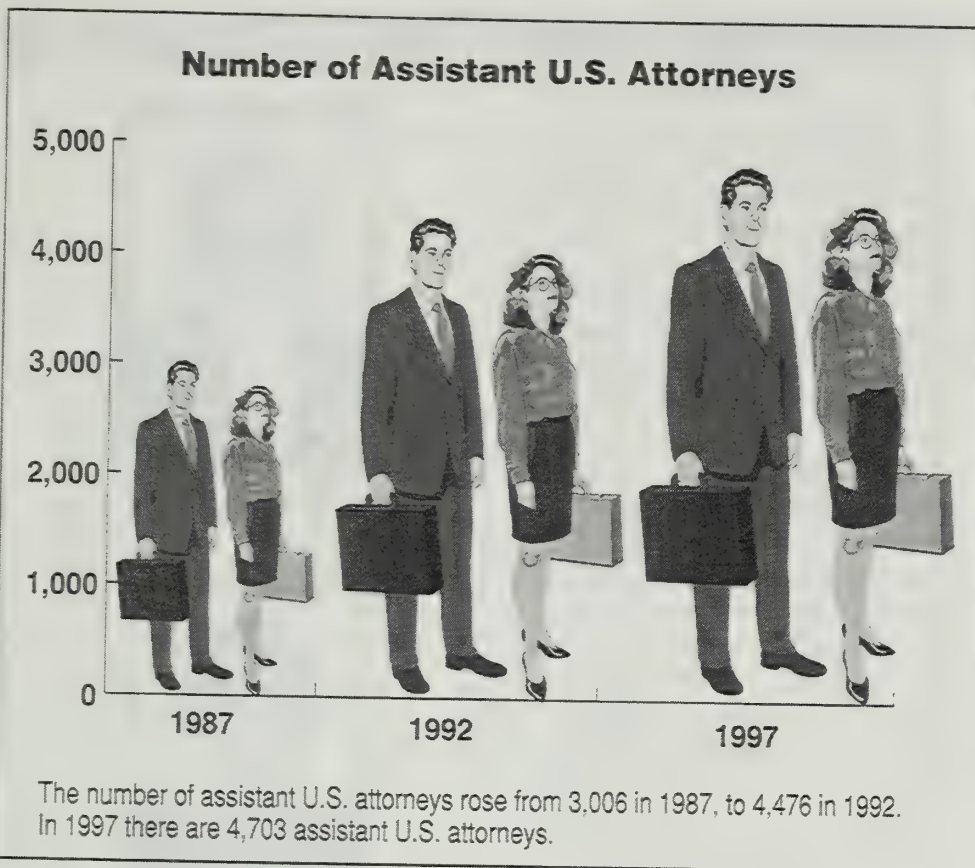
This is not the first time Congress has passed legislation concerning the Oklahoma City trial. Section 235 of the Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132, requires trial courts to order closed circuit televising of proceedings to permit victims of crime to watch criminal trial proceedings in cases where the venue of the trial is changed (1) out of the state in which the case was initially brought; and (2) more than 350 miles from the location in which those proceedings originally would have taken place. The legislation was introduced after the Oklahoma City trial was moved to Denver, Colorado. 

DOJ Increases Reflected in Judiciary Workload

The Department of Justice (DOJ) released statistics last month showing a 4 percent increase in criminal cases filed by U.S. attorneys' offices in fiscal year 1996, and a 6 percent increase in civil cases when compared to FY95. An increase in the work product of the DOJ directly impacts the workload of the federal courts, and, as an illustration, during the same period the caseload in the federal district courts rose 8 percent. (The Judiciary's civil caseload includes cases not involving the United States. This accounts for the difference in percentage caseload increase between DOJ and the Judiciary.)

In its fiscal year 1998 budget presentation, DOJ requested a 5.1 percent increase in U.S. attorney positions to "enhance its fight against youth violence, illicit drugs, terrorism, and illegal immigration." In addition, there is a 3.9 percent increase—873 positions—requested for DEA, FBI, and border patrol agents. DOJ is requesting \$19 billion in funding, a 4.9 percent increase. Over the last three years, Congress has increased funding for DOJ agencies an average of 52 percent. During the same time, the Judiciary received a 29 percent increase.

At House appropriations subcommittee hearings last month, Judge John G. Heyburn II, (W.D. Ky.) chair of the Judicial Conference Committee on the Budget, emphasized the link between law enforcement efforts and the Judiciary's workload. "One of the ways in which we are unique is that we do not control our workload; it is determined by the Constitution and statutes," Heyburn testified. "The workload is driven by the laws



enacted by Congress, the citizens of our country who come to us to resolve their disputes and financial problems, and to a great extent the prosecutorial policies of, and resources provided to, the Department of Justice."

If the past is an accurate indicator, with the addition of assistant U.S. attorneys, caseloads in federal courts could be expected to show a comparable growth.

As an example, in FY96, immigration case filings in U.S. district courts rose 40 percent, due in large part to an interagency program, Operation Gatekeeper, to prevent and deter illegal entry across the border between the U.S. and Mexico. For 1998, DOJ is requesting a 13 percent increase in its budget to support stepped-up federal law enforcement activities along the Southwest border, increased removals of criminal aliens and enhanced enforcement against employers who hire illegal aliens. DOJ is also requesting 500 new border patrol agents. With these resources, it is reasonable to expect the immigra-

tion caseload in the federal courts will continue to grow.

DOJ also has requested a 4.2 percent increase in funding and 168 new DEA agents to identify, investigate, and prosecute major drug trafficking organizations along the Southwest border, to attack methamphetamine abuse, and to target heroin trafficking within the U.S. Thirty-seven assistant U.S. attorneys were requested to investigate international and multi-jurisdictional drug trafficking organizations and coordinate attacks against international drug organizations.

Drug cases have a heavy, and disproportionate, impact on the federal courts. In FY96, drug case filings in district courts increased 5 percent and the number of defendants charged with drug offenses rose 4 percent to create a defendant-to-case ratio for drug offenses of 2:1, the highest for all offenses. With additional DOJ manpower concentrating on drug crimes, the caseload can be expected to continue to increase in federal courts.

1997 Director's Awards Honor Federal Court Employees

A clerk of court is honored for her outstanding achievements in improving the administration of the federal Judiciary and three clerks of court and two chief probation officers are honored for their long-term contributions to managerial effectiveness and improved administration within the federal Judiciary.

Mary Weibel, clerk of court for the U.S. Bankruptcy Court for the Southern District of Iowa, is the recipient of the 1997 Director's Award for Administrative Excellence. This award, presented by the Director of the Administrative Office, honors federal Judiciary employees who promote administrative innovation within the federal court system.

Cathy A. Catterson, clerk of court for the U.S. Court of Appeals for the Ninth Circuit; Karen Eddy, clerk of court for the U.S. Bankruptcy Court for the Southern District of Florida; the late Carol C. Fitzgerald, former clerk of court for the U.S. District Court for the District of Nevada; Richard A. Houck, Jr., chief U.S. probation officer for the District of Columbia; and Barry Polsky, chief U.S. probation officer for the Eastern District of Pennsylvania are recipients of the 1997 Director's Award for Outstanding Leadership. The award is given by the Director of the Administrative Office to Judiciary managers who have made outstanding sustained contributions to increase program effectiveness and/or to reduce costs in administration.

In announcing this year's award recipients, AO Director Leonidas Ralph Mecham praised their commitment to bettering the federal court system, saying, "The dedication of those honored by these awards is superior and has resulted in increased efficiency and effectiveness in the courts and, in turn, better services to the public." This year's



Cathy A. Catterson



Karen Eddy



Richard A. Houck, Jr.



Barry Polsky

award recipients were selected by Judge H. Robert Mayer (Fed. Cir.), Judge Royce C. Lamberth (D. D.C.) and Assistant Director for the AO Office of Human Resources and Statistics, Myra Howze Shiplett.

● **Mary M. Weibel** receives the Director's Award for Administrative Excellence in honor of her outstanding achievements as clerk of court in the U.S. Bankruptcy Court for the Southern District of Iowa. She is credited with leading the automation efforts in the court, and developing faster, more efficient ways to run court operations. Wiebel's vision helped to create the foundation for a new national bankruptcy docketing program that can be used to improve efficiency in courts nationwide.

● **Cathy A. Catterson**, clerk of court for the Ninth Circuit, has been an innovative and effective administrator. During the past 12 years, she implemented procedures to enhance the courts' ability to effectively handle an ever-increasing caseload and led the way for her court to be the first federal appellate court to adopt an automated docketing system, which resulted in cost savings and increased operational efficiency. In addition to serving on a number of federal court advisory groups, Catterson has been consulted by the governments of India and Israel for assistance in revamping administrative procedures in their courts.

● **Karen Eddy**, clerk of court for the U.S. Bankruptcy Court for the Southern District of Florida, is recognized for the long-term contributions she has made to increase managerial effectiveness and develop improvements in the administration of the federal Judiciary. Eddy has actively supported

- 3-4 Thursday-Friday**
Advisory Committee on Appellate Rules
- 7-8 Monday-Tuesday**
Advisory Committee on Criminal Rules
- 14-15 Monday-Tuesday**
Advisory Committee on Evidence Rules
- 14-16 Monday-Wednesday**
Workshop for Bankruptcy Judges II

APRIL

MAY

- 1-2 Thursday-Friday**
Advisory Committee on Civil Rules
- 1-3 Thursday-Saturday**
Eleventh Circuit Conference
- 4-7 Sunday-Wednesday**
Fifth Circuit Conference
- 6-7 Tuesday-Wednesday**
Committee on Defender Services
- 7-10 Wednesday-Saturday**
Workshop for District Judges I
- 12-14 Monday-Wednesday**
Federal Judges Association Conference
- 13-17 Tuesday-Saturday**
Sixth Circuit Conference
- 15-17 Thursday-Saturday**
Third Circuit Conference
- 29-30 Thursday-Friday**
Committee on International Judicial Relations

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VACANCY ANNOUNCEMENTS THE THIRD BRANCH

Vol. 29 Number 4 April 1997

BANKRUPTCY JUDGESHIP, Eastern District of California

Applications are being accepted for a Bankruptcy Judge position in the Eastern District of California. The incumbent will maintain chambers in Fresno and will hear cases in Bakersfield 2-3 days per month. Basic qualifications include (1) admission to practice before the highest court of at least one state or the District of Columbia; (2) membership in good standing in every bar in which membership is held; and (3) at least five years of legal practice experience. Term of office is 14 years. Salary: \$122,912 per annum. Application forms may be obtained by calling, writing, or faxing a request to Office of the Circuit Executive, P.O. Box 193939, San Francisco, CA 94119-3939. Telephone: (415) 556-6100. Fax: (415) 556-6179. The application form also is available on computer disk. All applications must be in the required format. The position is expected to be filled in January 1998. **Deadline for completed application materials is April 30, 1997, at 5:00 p.m.**

AUTOMATION AND TECHNOLOGY MANAGER, Federal Circuit

Applications are being accepted for an Automation and Technology Manager position at the U.S. Court of Appeals for the Federal Circuit. Duties include but are not limited to making and setting policy concerning the development, introduction, and operation of all automated systems in the Federal Circuit. The incumbent has the overall responsibility for establishing guidelines for the management of systems hardware and software, for insuring proper backup and recovery procedures, for training both technical and non-technical personnel to operate the systems, and for coordination and integration of all data processing, office automation, and data communications resources within the circuit. A minimum of five years of experience, including three years of progressively responsible experience in administrative, managerial, supervisory, or professional work, which provided an opportunity to acquire knowledge of administrative or managerial principles, policies, and procedures in an appellate court setting or of automation functions, applications, terminology, and methodology, is required. Salary: \$64,555-\$83,951. Send SF 171 or OF 612 and resume to Chambers of the Chief Judge, U.S. Court of Appeals for the Federal Circuit, Suite 901, 717 Madison Place, NW, Washington, D.C. 20439. **Open until filled.**



Carol C. Fitzgerald



Mary Weibel

and worked on many initiatives to continue the Judiciary's growth in the automation field. She chaired the group that made the Bankruptcy Noticing Center a success, saving the Judiciary millions of dollars in postage.

- Carol C. Fitzgerald, former clerk of court for the District of Nevada, is honored posthumously for her long-term contributions to the federal Judiciary. She began her court career in 1965 as a deputy clerk and was named clerk of court

in 1976. For the next 19 years, Fitzgerald oversaw court operations in the District of Nevada, and earned the respect and admiration of her colleagues both in her court and in courts across the country.

- Richard A. Houck, Jr., began his service as the chief U.S. probation officer for the District of Columbia in 1994, and receives the Director's Award in recognition of his contributions to increasing program effectiveness in several areas and reducing various costs in the admin-

istration of justice. Houck led the efforts to standardize office automation for greater efficiency; initiated the Tri-District Probation and Pretrial Services Conferences to enhance communication and improve court service in Maryland, Virginia, and the District of Columbia; and focused significant efforts on improving the level of excellence of service to the court as well as the quality of presentence and supervision reports provided to the bench.

- Barry Polsky, chief probation officer in the Eastern District of Pennsylvania, has been involved for the past six years in improving the financial management of the federal Judiciary and is being honored for his efforts. He has represented the courts and assisted in the implementation of key changes under the decentralized budget program for the federal courts. Most recently, Polsky has been working as a member of a task force charged with enhancing the budget decentralization process. ⚖️

Chief Judge Sear Honored by Government of Panama

The Ambassador of Panama to the United States, Eduardo Morgan, presented his country's National Commendation of the Order Vasco Núñez de Balboa to Chief Judge Morey L. Sear (E. D. La.) in ceremonies at the Embassy of Panama in Washington last month. This is the highest civilian honor given by the government of Panama.

Between 1978 and 1982, Sear was the last presiding judge for the U.S. District Court for the District of the Canal Zone, while sitting on the

See Panama on page 8



Ambassador of Panama to the United States, Eduardo Morgan, presents Chief Judge Morey L. Sear with the order Vasco Núñez de Balboa.

JUDICIAL MILESTONES

Appointed: Charles B. Day, as U.S. Magistrate Judge, U.S. District Court for the District of Maryland, February 18.

Appointed: Jennie D. Latta, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Tennessee, March 6.

Elevated: Judge Dudley H. Bowen Jr., to Chief Judge, U.S. District Court for the Southern District of Georgia, succeeding Chief Judge B. Avant Edenfield, March 28.

Elevated: Judge Joseph J. Farnan, Jr., to Chief Judge, U.S. District Court for the District of Delaware, succeeding Chief Judge Joseph Longobardi, July 1.

Elevated: Bankruptcy Judge Geraldine Mund, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Central District of California, succeeding Chief Bankruptcy Judge Calvin K. Ashland, January 1.

Senior Status: Judge Eugene F. Lynch, U.S. District Court for the

Northern District of California, March 14.

Senior Status: Judge Alan H. Nevas, U.S. District Court for the District of Connecticut, March 27.

Retired: Magistrate Judge F. Steele Langford, U.S. District Court for the Northern District of California, February 28.

Deceased: Senior Judge John R. Bartels, U.S. District Court for the Eastern District of New York, February 13.

Deceased: Senior Judge Oren Harris, U.S. District Court for the Western District of Arkansas, February 5.

Deceased: Senior Judge Charles R. Richey, U.S. District Court for the District of Columbia, March 19.

Deceased: Magistrate Judge John C. Manna, U.S. District Court for the District of New Jersey, February 26.

THE THIRD BRANCH

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Panama continued from page 7

bench in the Eastern District of Louisiana. At that time, the Fifth Circuit had appellate jurisdiction over the district court in the Canal Zone, and provided district judges from the circuit to conduct the court's affairs. When the Panama Canal Treaty was signed, the court retained jurisdiction of any civil cases already instituted and pending. Sear was responsible for liquidating some 800 civil cases and 92 criminal cases during a transition period of 30 months. Sear also worked for the adoption of a maritime code for the Republic of Panama. The award honors "the

monumental task you were able to direct and accomplish in assuring strict compliance to all mandates of the Torrijos-Carter treaties, delivering a smooth and orderly transition of all judicial concerns between the two nations. . . . Through a high degree of personal dedication and professional commitment, you were able to clear a hopelessly backlogged civil docket, along with the criminal and maritime dockets. This achievement was accomplished with precise order, during the allotted time and within the policies mandated by law for this operation."

JUDICIAL BOXSCORE

As of March 1, 1997

Courts of Appeals	
Vacancies	25
Nominees	8
District Courts	
Vacancies	70
Nominees	18
Court of International Trade	
Vacancies	2
Nominees	0
Courts with "Judicial Emergencies"	23

Courts Coping with Record Bankruptcy Filings

Bankruptcy filings have doubled in the last decade, increasing the pressure on bankruptcy courts across the country to improve the speed with which they handle cases. Courts have responded by automating manual jobs, cross-training staff, borrowing ideas from other courts, and using bankruptcy case-processing measures to judge their progress. In fact, the 1995 national statistics showed improvement for the second straight year on every one of 17 bankruptcy case-processing measures.

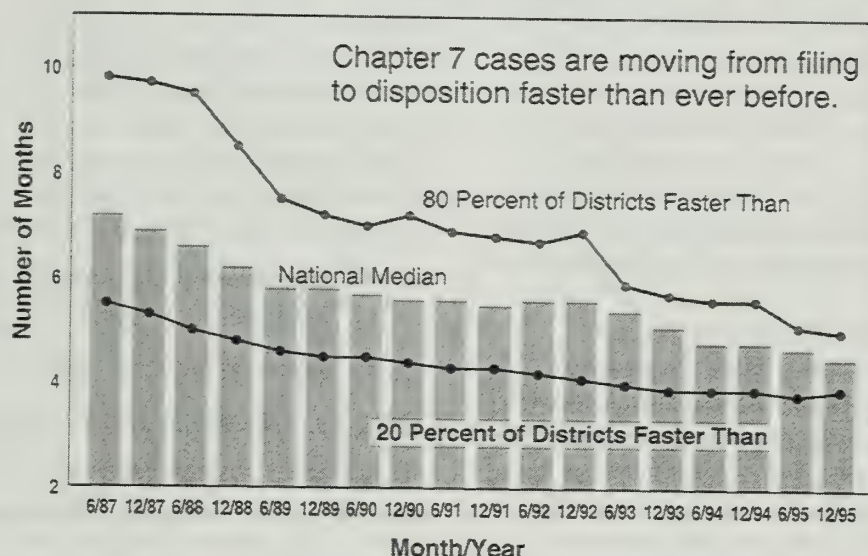
For instance, the time it takes to dispose of a routine, no-asset chapter 7 bankruptcy case has dropped by over a month. The proportion of older chapter 7 cases pending has been reduced by more than half, while the proportion of older chapter 11 cases and adversary proceedings pending are each down by more than one-third. These improvements are all the more remarkable coming at a time when budget constraints have reduced staffing levels in the bankruptcy courts, while bankruptcy filings are at an all-time high, having topped one million in fiscal year 1996 for the first time ever.

Since 1991, the Bankruptcy Judges Division of the Administrative Office annually has provided bankruptcy courts with statistical tables and graphs measuring, from filing to disposition, the speed at which bankruptcy cases of different types were processed in each district. A committee of judges, clerks, and AO staff developed the 17 case-processing measures based on data reported to the AO. Until then, bankruptcy clerks had little with which to compare their courts' activity or to see how different types of cases were moving through their courts. The bankruptcy case-processing measures are independent of

court size and reflect percentages, averages, and medians rather than absolute numbers, so individual bankruptcy courts can compare case-processing speed with courts nationwide. They were designed to be as user-friendly as possible. With the case-processing measures, bankruptcy judges and clerks now have an objective measure of one aspect of performance—their case-processing speed.


The case-processing measures reports are a management tool developed to alert judges and clerks to the types of cases that are causing bottlenecks, or to the consequences of administrative and judicial case-processing techniques. But actual improvement results from greater system efficiency, more automation, and better case management, office management, and resource allocation. Said Peggy Carroll, bankruptcy clerk in the District of Arkansas, "The fact is that we have the tools we need to do the work: the com-

**Median Disposition Time for Chapter 7 Cases
1987 - 1995**



According to Jon Ceretto, bankruptcy clerk for the Central District of California, "The measures are indicators, not a reason to do better. We wanted to improve, and the statistics showed us the issues we needed to tackle. Then we, like a lot of other courts, borrowed ideas, software, and systems from more successful courts. In the process, everyone improved." Their efforts are paying off. The Central District of California, which handles nearly 9 percent of the nation's bankruptcy filings, recently was recognized for its improvement in 1995 on every bankruptcy case-processing measure.

puters, the cross-training in the office, the support of our judges, and, most of all, staff interest and pride in their work. When filings increase and life gets hectic, teamwork does the job."

Timely case-processing means debtors emerge from bankruptcy faster, often with lower professional fees and faster payment of creditors. Timely case-processing also reduces the additional demands a backlog of cases makes on clerks and judges, who are then better positioned to deal with dramatically increasing case filings. 

Defender Services Faces Challenges

Judge Emmett R. Cox (11th Cir.) was a district court judge in the Southern District of Alabama before being elevated to the Eleventh Circuit in 1988. He is chair of the Judicial Conference Defender Services Committee.

Q: Can you tell us about the genesis of defender services? Why does the federal government provide counsel to defendants?

A: The defender services program oversees the provision and payment of counsel in criminal proceedings in the federal courts for people who cannot afford to hire their own attorney. Counsel is provided because the Sixth Amendment to the Constitution entitles a defendant to the effective assistance of counsel in criminal proceedings. A defendant who is unable to afford a lawyer must be provided one at government expense. Statistically speaking, in 85 percent, more or less, of the criminal cases in federal courts, a defendant will be unable at some point to pay his or her own lawyer and an attorney will have to be appointed and paid at government expense. In addition, acts of Congress allow and provide for the appointment and payment of counsel in some cases where state and federal inmates are challenging their convictions in post-conviction proceedings as being contrary to the Constitution or laws of the United States.

Q: What are some of the issues presently confronting the

Judicial Conference Defender Services Committee?

A: We have so many that we have to devote some time to prioritizing the issues that need to be addressed. In my view, the biggest challenges facing our committee today are in the death penalty area, where we face two big challenges. The first challenge is doing what we can to assure the availability of qualified counsel in these cases. The Anti-Terrorism and Effective Death Penalty Act of 1996 imposed for the first time statutes of limitations that require the filing of federal court challenges to state court convictions within certain limited time periods. As a result, a large number of these cases will be filed this year. There are a number of death-sentenced inmates around

the cost of providing counsel in these cases is going to climb, despite our best efforts. Without our best efforts, these costs could overwhelm the appropriation for this program. We have a number of initiatives underway to try to help judges control costs and manage both the federal death penalty prosecutions and the proceedings in the federal courts challenging state court convictions and death sentences. However, all of these cases are complex and important matters that require a lot of lawyer time and a lot of expense to handle properly. At the same time, this program, like other programs, must operate on a budget.

Another issue that our committee has to face is trying to assure the availability of qualified counsel in non-death penalty cases, given that the hourly rates of pay for appointed lawyers are being eroded by inflation.

"As Congress continues to expand federal criminal jurisdiction, which it is now considering doing in the juvenile crime area, the demands on the defender services program and its resources will also change."

the country who do not have lawyers, and identifying lawyers—a sufficient number of lawyers, at one time, who are qualified to handle these cases—is a significant problem. Our committee is involved not only in efforts to assist courts in finding these lawyers but also in training these lawyers to handle the cases.

The other challenge we face in the death penalty area is controlling costs. Federal prosecutions where the death penalty is sought is a relatively new phenomenon in the federal courts, but the number of these cases is increasing. At the same time, the death row population in the states is growing. This means

Q: Last year, panel attorneys finally received a \$5 per hour increase in compensation. What issues were involved in granting this increase and is it adequate?

A: The Judicial Conference sought this \$5 dollar increase last year as part of an overall plan to reach a national uniform rate of \$75 per hour across the board by the year 2000. In 1986, authority was given to increase this rate to \$75 in 16 high cost districts, and, in 1996, rates were increased to \$45 out of court and \$65 for in-court work. Except for those 16 high cost districts, however, there was no general

increase between 1984 and 1996. Congress frustrated the strategy of a rate increase over a number of years when it refused to fund a \$5 increase in FY97. Despite this setback, the Judiciary is again seeking a \$5 increase in FY98.

The \$5 increase last year does not solve the problem. In the opinion of the committee and the Conference, it is not adequate. We on the committee are convinced that the quality of representation is declining because the hourly rate of compensation has been severely eroded by inflation through the years. In some areas, \$45 an hour barely covers overhead costs for lawyers. We're finding that there are fewer well-qualified lawyers who are willing to accept appointments in these cases, although we have no scientific way of measuring the quality of representation. We rely on what I would term anecdotal evidence, on what lawyers and judges tell us about what is happening in the program. We now are working on how to go about studying the quality of representation by panel attorneys in the federal courts.

Q: You chaired a special subcommittee on the death penalty representation program. Subsequently, the subcommittee's report was approved by the Judicial Conference. Can you tell us about your subcommittee's findings?

A: We made a number of findings. The principal finding was that an institutional defender, like what used to be called a death penalty resource center and was later called a post-conviction defender organization, provided the best representation at the lowest cost in capital habeas cases, the proceedings in the federal courts challenging state court death sentences. We thought, though, that these organizations ought to move away from



Judge Emmett R. Cox


providing a great deal of help to private lawyers who were unfamiliar with death penalty litigation. Instead, we thought that the organizations should represent the inmates themselves, and eliminate the need for the involvement of inexperienced private lawyers. Of course they could still provide some assistance to private attorneys as necessary. Before the ink was dry on this report, however, Congress defunded these defender organizations, which was its prerogative. That, however, required the courts to look for some other way to provide counsel. The Defender Services Committee is trying to help courts to do this.

The subcommittee also studied and made some recommendations on what could be done to reduce costs when private lawyers are appointed. We encouraged judges to develop case budgets. We suggested that the judge sit down with the inmate's lawyer and try to develop a budget for the legal and other services that would be required. With that approach, neither the court nor counsel would be surprised at the end of the case when the bill for fees and expenses came in. Another recommendation was

that the courts handling these cases adopt case management techniques used in complex civil cases in an effort to better manage the case and control costs.

I think there is a consensus within the federal Judiciary that the best way to provide representation in capital habeas corpus cases, both from the standpoint of the quality of the representation afforded and the costs, is through an institutional defender; that is, a defender organization as distinguished from a private lawyer. Congress does not agree with that. It is an issue. We still need to address how best to serve the dual purpose of providing good representation and providing it at a reasonable cost. I would like to see Congress study the matter, with the hope that it would come to the same conclusion that the federal Judiciary has.

Q: What do you see for the future of defender services?

A: Part of the problem is that we have a moving target. Our committee has studied at some length what ought to be done in the death penalty representation area, but, as I say, the conclusions were rejected by Congress. Now we're studying the matter with the view of seeing what we can do under the present state of the law. Perhaps we will come up with some good ideas. I hope so. But new problems constantly arise. Five years ago, the implementation of sentencing guidelines transformed federal criminal practice. In the death penalty area, capital prosecutions, as opposed to capital habeas, have emerged as strong competition for domination of defense resources. As Congress continues to expand federal criminal jurisdiction, which it is now considering doing in the juvenile crime area, the demands on the defender services program and its resources will also change. 

JUDICIAL CONFERENCE OF THE UNITED STATES, March 11, 1997



Seated: (L to R) Chief Judge Juan R. Torruella (1st Cir.); Chief Judge Jon O. Newman (2nd Cir.); Chief Judge Dolores K. Sloviter (3rd Cir.); Chief Judge J. Harvie Wilkinson III (4th Cir.); Chief Justice William H. Rehnquist; Chief Judge Henry A. Politz (5th Cir.); Chief Judge Boyce F. Martin, Jr. (6th Cir.); Chief Judge Richard A. Posner (7th Cir.); Chief Judge Richard S. Arnold (8th Cir.).

Standing, Second Row: Chief Judge Joseph L. Tauro (D. Mass.); Judge W. Earl Britt (E.D. N.C.); Chief Judge Lloyd D. George (D. Nev.); Chief Judge Glenn L. Archer, Jr. (Fed. Cir.); Chief Judge Procter R. Hug, Jr. (9th Cir.); Chief Judge Joseph W. Hatchett (11th Cir.); Chief Judge Harry T. Edwards (D.C. Cir.); Chief Judge Stephanie K. Seymour (10th Cir.); Judge Donald E. O'Brien (N.D. Iowa); Judge Clarence A. Brimmer (D. Wyo.).

Standing, Third Row: Judge William H. Barbour, Jr. (S.D. Miss.); Chief Judge Peter C. Dorsey (D. Conn.); Judge Thomas A. Wiseman, Jr. (M.D. Tenn.); Chief Judge Edward N. Cahn (E. D. Pa.); Chief Judge Michael M. Mihm (C.D. Ill.); Judge Wm. Terrell Hodges (M.D. Fla.); Chief Judge John Garrett Penn (D. D.C.); Chief Judge Gregory W. Carman (Int'l Trade); Leonidas Ralph Mecham, Director, AOUSC. (photo credit: Franz Jantzen, Collection of the Supreme Court of the United States)

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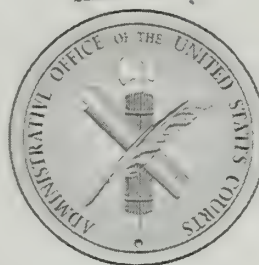
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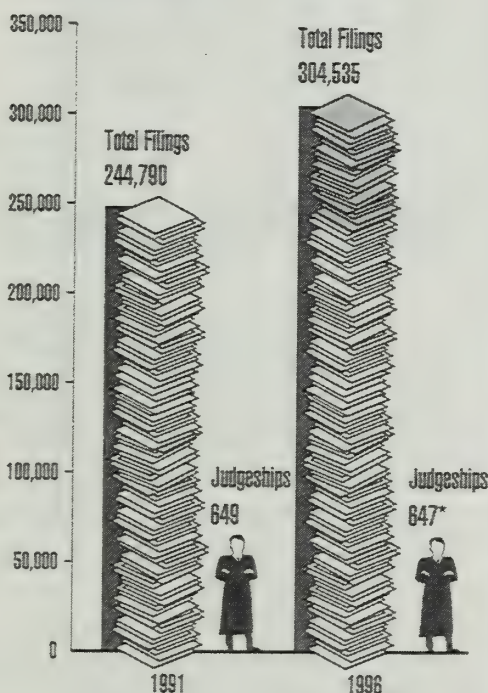
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Article III Judgeship Bill Introduced in Senate

On May 1, Senator Patrick J. Leahy (D-VT) introduced S. 678, the Federal Judgeship Act of 1997. The bill would create 12 permanent and 5 temporary courts of appeals judgeships and 24 permanent and 12 temporary district court judgeships, and give Article III status to the judgeship authorized for the Northern Mariana Islands. "The Judicial Conference of the United States, the nonpartisan policy-making arm of the judicial branch, believes that the continuing heavy caseload of our courts of appeals and district courts merits additional judges," said Leahy. "Overworked judges and heavy caseloads slow down the judicial process, and as we all know, justice

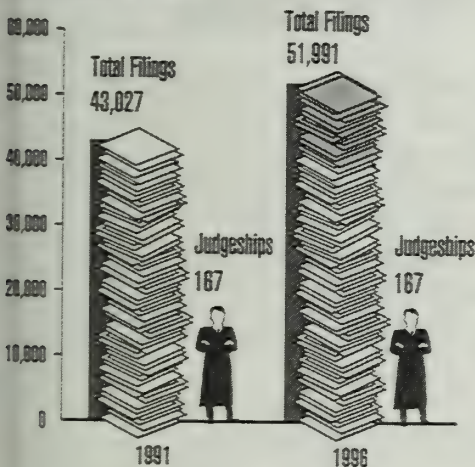
delayed is justice denied." Congress last passed legislation in 1990 to increase the number of Article III judges. Since that time caseload in the circuit and district courts has climbed steadily. "[O]ur judges do an admirable job under tough conditions," Leahy noted. "They endure constant criticism and heavy caseloads." So far in the 105th Congress, one appeals and one district court judge have been confirmed.

U.S. District Courts



* Two temporary judgeships expired between 1990 and 1996.

U.S. Courts of Appeals



Congress Focuses on Judicial Activism and Related Legislation

Three bills intended to change the way the Judiciary does business were introduced in Congress in April. One bill revisits the cameras in the courtroom issue, a second bill would require courts to make public the amount paid to court-appointed attorneys under the Criminal Justice Act at the time the payments are made, and another bill addresses various judicial reforms. Each House also has before it a proposed Constitutional amendment that would limit the term of office for Article III judges, and Senate Republicans have considered changes to the judicial appointment process.

H.R. 1252, Judicial Reform Act of 1997

In recent months, the term "judicial activism" frequently has been heard in both the House and Senate. In a speech delivered early this year following his reelection as Speaker of the House, Representative Newt Gingrich (R-GA) said he would seek hearings in this Congress on judicial activism.

See Legislation on page 2

INSIDE

- Update on Judge's Pay Adjustment pg. 3
- What Electronic Technologies Are Judges Using? pg. 5
- Statutory Approach Favored For Victims' Rights pg. 12

Legislation continued from page 1

Representative Henry J. Hyde (R-IL), chair of the House Judiciary Committee, agreed.

Last month Hyde introduced H.R. 1252, the Judicial Reform Act of 1997. The House Judiciary Committee scheduled a hearing on the bill May 14. Among the expected witnesses are Chief Judge Henry Politz (5th Cir.), representing the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, and Judge Ann Williams (N.D. Ill.), chair of the Conference Committee on Court Administration and Case Management. The Judicial Conference has been polled by mail ballot for positions on certain sections of this bill.

Section 2 is identical to a bill, influenced by California's Proposition 209, that made it through the House last Congress, but no further. This provision would require a three-judge court to hear an application for an injunction, on the grounds of unconstitutionality, restraining the enforcement, operation, or execution of a state law adopted by referendum. Such courts would be required to expedite



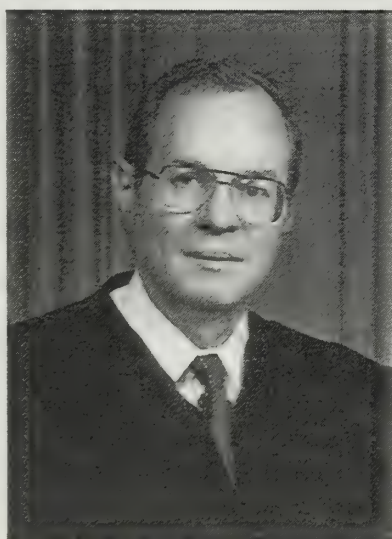
Representative Henry J. Hyde (R-IL)

consideration of the application for an injunction, and their decisions would be appealable to the Supreme Court.

Section 3 would amend Title 28 U.S.C. Section 1292(b) to make possible interlocutory appeals of court orders relating to class actions. A court of appeals would be authorized to permit an appeal by either party from a district court's class action certification decision. This also has been introduced as a separate bill, H.R. 660, by Representative Charles T. Canady (R-FL). The Judicial Conference Advisory

Committee on Civil Rules has studied a similar provision amending Rule 23 of the Federal Rules of Civil Procedure. Proposed amendments to Rule 23 were approved by the committee at its May meeting, and the recommendations will be submitted to the Standing Committee on Practice and Procedure, and later to the Judicial Conference and the Supreme Court. This action is consistent with the rule-making process established by Congress under the Rules Enabling Act.

Section 4 would amend Title 28 U.S.C. Section 372(c) so that complaints filed against the conduct of judges in one judicial circuit shall be referred to another judicial circuit for proceedings. The Judicial Conference would be required to establish a system for referring complaints for investigation and resolution. The same provisions are contained in H.R. 702, the Judicial Disciplinary Proceedings Act of 1997, a bill introduced by Representative Ed Bryant (R-TN). Bryant introduced a similar bill in the 104th Congress that passed the house as part of the federal courts improvement legislation. The provision was dropped by the Senate.



Justice Anthony M. Kennedy

Justice Urges Action on Pay Adjustment

"About eight years ago, there was a judicial pay raise and there was an understanding that every year thereafter there would be a cost-of-living increase for the judges. For four years that increase has been denied. All other officers in the government and employees of the government received this but not federal judges. . . . This [pay adjustment] is vital if our judges are to maintain in their ranks new judges who come from the competent, highest levels of the practicing bar, and it is necessary if the Congress is to keep the faith with the Judiciary that the Constitution requires them to keep."

Justice Anthony M. Kennedy, from his remarks at the 11th Circuit Judicial Conference, May 1997.

Section 5 would amend Title 28 U.S.C. Chapter 85 to limit court-imposed taxation. To enter orders or approve settlements requiring a state or local government to impose or increase taxes for the purpose of enforcing any federal or state legal right, the court would be required to find, by clear and convincing evidence, the existence of six criteria. Upon making such findings, the order would be subject to immediate interlocutory de novo review. Any aggrieved person or entity could present evidence and seek an appeal of the court's findings. The section also provides that an order automatically terminates after one year or earlier, if the deprivation of rights has been addressed. Senator Charles Grassley (R-IA) introduced similar legislation in the 104th Congress and held hearings, but there was no further action on the bill. In the 105th Congress Senator Thurmond (R-SC) has introduced legislation to limit the remedial powers of federal courts to order taxes.

Section 6 would amend Title 28 U.S.C. Chapter 21 by adding a provision allowing reassignment to another appropriate judicial officer of a civil case in district courts upon motion by a party. Each side shall be entitled to one reassignment without cause as a matter of right, but the motion must be brought not later than 20 days after notice of the original assignment of the case. The Judicial Conference has opposed such reassignments without cause for almost two decades. Representative Charles T. Canady (R-FL) introduced a bill with similar provisions, H.R. 520, the Peremptory Challenge Act of 1997, but this bill also includes criminal and bankruptcy cases before not only district court judges, but also bankruptcy judges, magistrate judges, and judges of the U.S. Court of Federal Claims.

See Legislation on page 4

Co-sponsors Join Pay Adjustment Measure

In the House, H.R. 875, a bill to adjust and provide a procedure for the future adjustment of the salaries of federal judges, had acquired 27 co-sponsors as of May 1, 1997. The list of co-sponsors has grown daily.

The bill was introduced in February by Representatives Henry J. Hyde (R-IL) and John Conyers Jr. (D-MI) and is similar to the Judicial Conference proposal to provide judges with a one-time, catch-up pay adjustment of 9.6 percent; end the current linkage between judicial, congressional, and Executive Schedule compensation; and repeal section 140 of P.L. 97-92, removing the current requirement that Congress affirmatively vote for cost-of-living increases for federal judges. Judicial salaries would be adjusted automatically on an annual basis, in the same percentage amount as the rate of pay of federal employees under the General Schedule.

The following Representatives are co-sponsors of Hyde's bill.

John Conyers, Jr. (D-MI)	William D. Delahunt (D-MA)
Barney Frank (D-MA)	Peter T. King (R-NY)
Christopher Shays (R-CT)	Greg Ganske (R-IA)
Steven H. Schiff (R-NM)	Zoe Lofgren (D-CA)
Howard L. Berman (D-CA)	Lincoln Diaz-Balart (R-FL)
Alcee L. Hastings (D-FL)	Thomas J. Manton (D-NY)
Nancy L. Johnson (R-CT)	Julian C. Dixon (D-CA)
Joseph M. McDade (R-PA)	William J. Coyne (D-PA)
Lamar Smith (R-TX)	Bob Filner (D-CA)
Martin T. Meehan (D-MA)	Thomas M. Foglietta (D-PA)
Owen B. Pickett (D-VA)	Martin Frost (D-TX)
Corrine Brown (D-FL)	John Lewis (D-GA)
Jim McCrery (R-LA)	John Cooksey (R-LA)

In the Senate, S. 394, a similar bill introduced by Senator Orrin G. Hatch (R-UT) also is building support with 13 co-sponsors. They are Senators

Patrick J. Leahy (D-VT)	Edward M. Kennedy (D-MA)
Thad Cochran (R-MS)	Connie Mack (R-FL)
Arlen Specter (R-PA)	John Breaux (D-LA)
Lauch Faircloth (R-NC)	James Jeffords (R-VT)
Slade Gorton (R-WA)	Chuck Robb (D-VA)
Phil Gramm (R-TX)	Kay Bailey Hutchison (R-TX)
Daniel K. Inouye (D-HI)	Daniel Patrick Moynihan (D-NY)

Senate Majority Leader Trent Lott (R-MS) and Minority Leader Thomas A. Daschle (D-SD) have voiced their support for a pay adjustment for judges, although they have not added their names as co-sponsors.

H.R. 1280, An Act To Allow Media Coverage of Court Proceedings

H.R. 1280 would allow the presiding judge of a court of the United States to permit the photographing, electronic recording, broadcasting, and televising to the public of federal court proceedings. The bill was introduced in the House by Representative Steven J. Chabot (R-OH) with a list of 13 co-sponsors, including Representatives Howard Coble (R-NC), Tom DeLay (R-TX), and Barney Frank (D-MA). The Judicial Conference would be authorized to promulgate advisory guidelines to which the presiding judge would refer in making decisions on the management or administration of the media coverage.

In September 1994, a three-year limited pilot program on cameras in federal courts ended with the Judicial Conference declining to approve a recommendation to expand camera coverage in district and appellate courts. In March 1996, the Judicial Conference adopted a resolution stating that "Each court of appeals may decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Conference may adopt." The Conference also voted to strongly urge each circuit judicial council to adopt an order reflecting the Conference's September 1994 decision and to abrogate any local rules of court conflicting with this decision.

S. 598, Disclosure of Court Appointed Attorneys Fees

Saying, "[W]e are spending a great deal of money on criminal defense lawyers and the American taxpayer ought to have timely access to the information that will tell them who is spending their money, and

how it is being spent," Senator Pete V. Domenici (R-NM) introduced S. 598, which would require courts to disclose various levels of information relating to payments to court-appointed lawyers depending on the stage of a trial. The bill amends Title 18 U.S.C. Section 3006A(d) to make amounts paid under this section available to the public upon the court's approval of the payment.

If a case is in pretrial status or still in progress, the court shall redact any detailed information on the payment voucher provided by defense counsel to justify expenses, and make public only the amounts approved by dividing the amounts into a list of general categories, including experts, hearings, investigative work, interviews, and others. The court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments to allow counsel to request redaction. According to Domenici, "That means that the criminal lawyer can ask the judge to take his big black marker and black out any information that might compromise these precious sixth amendment rights (the right to effective assistance of counsel, the defendant's attorney-client privilege, the work-product immunity of defendant's counsel, the safety of any witness) or the judge can make this decision on his own."

S.J. Res 26, H. J. Res. 74, Term Limit Resolutions

Senator Robert C. Smith (R-NH) has introduced a resolution proposing a constitutional amendment to establish limited judicial terms of office. Specifically, S. J. Res. 26 says, "The Chief Justice and the judges of both the Supreme Court and the inferior courts shall hold their offices for the term of 10 years. They shall be eligible for nomination and, by and with the advice and consent of the Senate, for appointment by the President to additional terms. This

article shall not apply to any Chief Justice or judge who was appointed before it becomes operative." In a news conference announcing the introduction of the amendment, Smith said, "Activist judges have taken control of prisons and school districts. They have ordered tax increases. Some have created new rules to protect criminal defendants that result in killers, rapists and other violent individuals being turned loose to continue preying on society....Term limits for judges would curb this detrimental trend."

Representative Frank Riggs (R-CA) introduced a joint resolution in the House, H.J. Res. 74, proposing an amendment to the Constitution to provide 8-year terms of offices for judges of federal courts other than the Supreme Court. The amendment also would establish that, "Any time (but not more than six years) served as a judge before the date of the ratification of this article of amendment shall be counted toward the first term of that judge under this article."

Judicial Selection

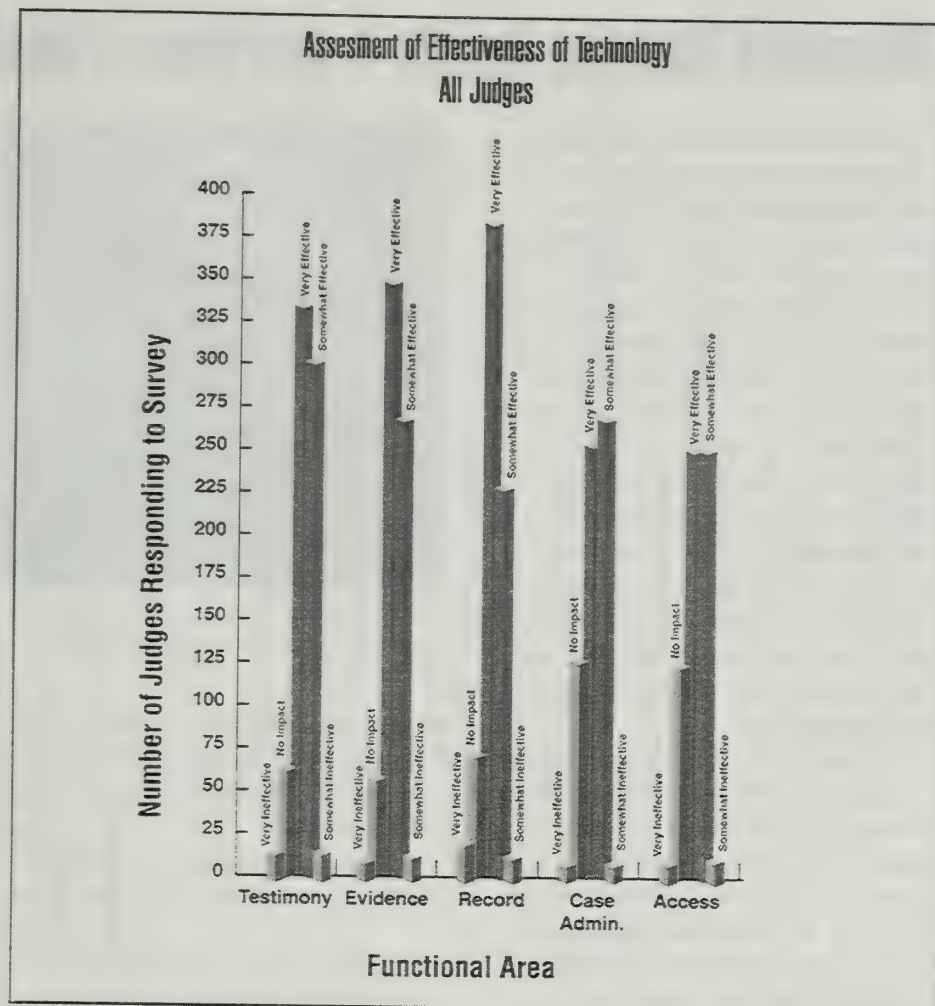
Last month Senate Republicans voted down a series of recommendations that would have given them broad new authority for choosing judicial nominees. The Senate Republican Conference, which is composed of the party's 55 senators, rejected a proposal that would have given a majority of Republican senators from a circuit the ability to block an appellate nominee for that circuit. They also rejected a provision that would require the administration to get advance approval from Senate Republicans from the states in a circuit before a nomination for the circuit's appeals court could go forward. The Republicans adopted recommendations that call for a separate floor vote on each judge, exclude the American Bar Association from its traditional role in assessing nominees, and condemn judicial activism.

Survey Tallies Judges' Interest In Courtroom Technology

How technologically savvy are judges? What electronic technologies have been used in their courtrooms and what works best for them? Recently, a survey from the Judiciary's Electronic Courtroom Project asked circuit, district, bankruptcy, and full-time magistrate judges about their usage of courtroom technology. From their responses, it is clear that technology has found a vital place in the courtroom. Of the 1,009 responses tallied, only 182 judges indicated they had no experience with technology or did not plan to use courtroom technology in the near future.

Of the remaining judges, almost two-thirds said they either use or plan to use technology in the areas of presentation of testimony and arguments, presentation of evidence other than testimony, taking the record, in-court case administration, in-court access to ancillary information, and security. Seven out of eight judges indicated that, for taking the record and presentation of evidence and testimony, technology increased the effectiveness of these courtroom functions. Three-quarters of the judges felt that courtroom technology increased in-court effectiveness in the areas of case administration, access to ancillary information, and security. District and magistrate judges indicated that technology had the greatest positive impact on effectiveness in taking the record, in presentation of evidence, and in presentation of testimony. Bankruptcy judges indicated that technology has the greatest positive impact on effectiveness for taking the record and case administration.

Telephone conferencing appears to be the most widely used courtroom



technology. For taking the record, audiotape is the primary technology used in federal courts, although half of the district judges now use computer-assisted transcription. Over half of the bankruptcy and magistrate judges indicated interest in using videotape or other technology for taking of the record.

For the future, district and magistrate judges said they planned to use technology for in-court access to ancillary information, which includes technologies providing access to information on the Data Communications Network or other network, computer-assisted legal research, and e-mail on the bench. A significant number of magistrate judges indicated they had plans to use technology for in-court case administration, including technologies permitting access to ICMS data or facilitating the preparation of orders from the bench.

Bankruptcy judges, while not currently using electronic technologies in the courtroom to a great extent, indicated they planned to use or were interested in using technology at some future point. Bankruptcy and magistrate judges saw technologies best being used for in-court case administration and in-court access to ancillary information.

The Electronic Courtroom Project, which involves judges, court employees, and an Administrative Office task force, is currently identifying several court sites for the implementation of state-of-the-market technology to facilitate courtroom processes. These study sites will serve, together with existing programs, as the basis for the development of funding recommendations and Judicial Conference policy on the use of courtroom technology.

Automated Modeling Assists in Courtroom Planning

As courts and circuit councils plan for courtroom use well into the next millennium, they will have a handy tool to visualize their future space requirements. At Judicial Conference direction, the Administrative Office has developed a computer model that takes certain assumptions about district judges, incorporates projections of the court's long-range facilities plan, allows courts to add their own unique variables, and produces a tailored plan of how many courtrooms will be needed 5, 10, or more years into the future as judges take senior status and vacancies and new judgeships occur.

"This model," said Judge Norman H. Stahl (1st Cir.), chair of the Judicial Conference Committee on Security, Space and Facilities, "graphically aids a court's analysis of future courtroom planning. Its projections are based upon a court's real need, available judgeship data, and actual and projected workloads. The end result is



Judge Norman H. Stahl, chair of the Judicial Conference Committee on Security, Space and Facilities

more than a snap shot in time; it is an accurate representation of the facilities that will be needed along a continuing time frame."

The model considers the following factors in making its calculations.

- The number of new judgeships approved by the Judicial Conference and recommended for approval by

Congress and the year approval is expected.

- The number of years it will take for a new judgeship to be approved by the Conference and Congress once weighted filings reach the level that qualifies a court for an additional judgeship.
- The number of years a senior judge will need a courtroom after taking senior status.
- The average age of a newly appointed judge at a particular court location.
- Projections of caseload based on the district's long-range facilities plan (other caseload measures such as raw or weighted filings also might be considered).
- The ratio of courtrooms per active and senior judge.
- The number of years before a replacement judge will be on board after a judge takes senior status.
- The year a judge is expected to take senior status once becoming eligible.

Readily Available Courtroom Essential for Justice

The Judicial Conference, at its March 1997 meeting, adopted a major policy directive for determining the number of courtrooms needed at a facility. With regard to district judges, one courtroom should be provided for each active judge. The policy of a courtroom for every active district judge is based on the essential nature of the courtroom to a judge's performance of his or her responsibilities. The certain availability of a courtroom is a major factor leading to settlements in civil cases and pleas in criminal cases. In order to promote settlement, a judge must be able to set

an early and firm trial date and an available courtroom must be assured for this purpose. Without this assurance, criminal defendants will have leverage to seek more favorable plea arrangements and civil litigants may gamble that their cases will be delayed. The availability of a courtroom, and the early and firm trial date it makes possible, answers Congress' directive in the Civil Justice Reform Act to reduce the costs and delay in civil litigation.

The Judicial Conference also voted to require each circuit to adopt a policy regarding courtroom availability for senior judges

who do not have a caseload requiring substantial use of a courtroom and by visiting judges. The policy would be applied when determinations are being made regarding the construction of courtrooms. The Conference policy also requires an assessment of other factors, including the workload to be handled by each judge; the number of years a judge is likely to be at the facility; an evaluation of the current complement of courtrooms, including the special proceedings courtroom; and an evaluation of the need for a courtroom specifically dedicated to use by visiting judges.

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 29 Number 5 May 1997

29-30 Thursday-Friday
Committee on International Judicial Relations

MAY

JUNE

2-6 Monday-Friday
Orientation for Newly Appointed District Judges

8-10 Sunday-Tuesday
Committee on Security, Space and Facilities

9-10 Monday-Tuesday
Committee on the Administrative Office

10-11 Tuesday-Wednesday
Committee on Judicial Resources

12 Thursday
Federal Circuit Conference

12-13 Thursday-Friday
Committee on Administration of the Magistrate Judges System

15-18 Sunday-Wednesday
Committee on Court Administration and Case Management

17-18 Tuesday-Wednesday
Committee on Automation and Technology

17-18 Tuesday-Wednesday
Committee on Administration of the Bankruptcy Judges System

19-20 Thursday-Friday
Committee on Rules of Practice and Procedure

19-22 Thursday-Sunday
Second Circuit Conference

23-24 Monday-Tuesday
Committee on the Judicial Branch

PLEASE POST

VACANCY ANNOUNCEMENTS THE THIRD BRANCH

Vol. 29 Number 5 May 1997

DEPUTY CHIEF PROBATION OFFICER, District of Utah

Applications are being accepted for a Deputy Chief Probation Officer position in the District of Utah. Salary range: JSP 14-16 (\$63,169-\$87,146). Interested applicants must contact Rae Lynn Alvalle at (801) 524-6524 to obtain information relative to the application procedure. Closing date: **June 23, 1997.**

- The percentage of the total district caseload handled at the location.

The Judicial Conference approved the planning assumptions the computer model uses at its March 1997 session. The model assumes that a senior judge with a courtroom will occupy the courtroom for 10 years after taking senior status; that it takes three years for a new judgeship to be established and a judge to begin work once a court's caseload warrants an additional judgeship; that a replacement judge begins work two years after the judge being replaced takes senior status; and that active judges will take senior status in the year they are eligible.

Courts and circuit judicial councils can modify the assumptions based on actual circumstances at their locations. For example, projections of future courtroom use can be based on the average age of the court's judges,

or on caseload, which varies from court to court. In this way, an individual court's needs can be considered when making projections. The court makes the changes by selecting the correct numbers on screens displayed by the computer model.

begin work, or a list showing when new judges would be needed based on caseload growth. In turn, projections can be checked against the General Services Administration planning prospectus that is prepared for each court project.

"The availability of a courtroom, and the early and firm trial date it makes possible, answers Congress' directive in the Civil Justice Reform Act to reduce the costs and delay in civil litigation."

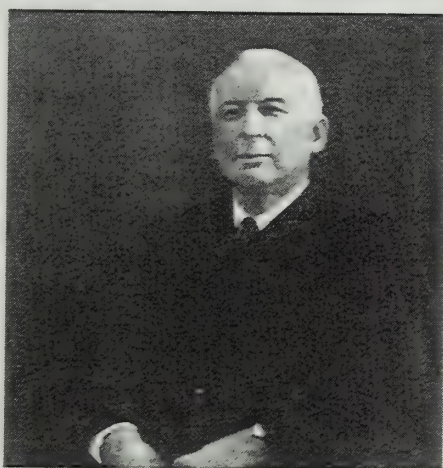
Finally, the computer model displays how the assumptions affect a court's courtroom planning. A judge/courtroom analysis timeline can graph current and projected 10-year courtroom requirements. The model also can generate a list telling when replacement judges would

Courts with projects in the planning stages soon will receive informational packets on the computer model from the AO. Questions about the materials can be directed to William J. Lehman, chief of the Space and Facilities Division.

Judge Seitz Receives Devitt Award

Judge Collins J. Seitz (3rd Cir.) has been named the recipient of the 15th annual Edward J. Devitt Distinguished Service to Justice Award by the American Judicature Society. The Devitt Award honors an Article III judge whose career has made significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole.

The award selection committee observed that "Judge Seitz's career has been characterized by courage, compassion, and scholarly excellence. . . . His decisions through his many decades of service display a mastery of subjects across the spectrum of American law." One of Seitz's early landmark decisions was an opinion he wrote in a



Judge Collins J. Seitz (3rd Cir.)

Delaware school desegregation case in which he questioned the constitutionality of school segregation and ordered a judicial remedy to end that practice in Delaware. The case was one of four to go on to the Supreme Court and be decided in the consoli-

dated case, *Brown v. Board of Education*.

Seitz was appointed vice chancellor of the Chancery Court, State of Delaware, in 1946, serving on that court until 1966. He also was an associate justice on the Delaware Supreme Court from 1949 to 1951. In 1966, he was appointed to the U.S. Court of Appeals for the Third Circuit, where he served as chief judge from 1971 to 1984. He took senior status in 1989.

The Devitt Award is named for the late Edward J. Devitt, chief judge of the U.S. District Court for the District of Minnesota. This year's award selection committee consisted of Associate Justice Anthony M. Kennedy (S.C.), Chief Judge Procter Hug, Jr. (9th Cir.), and Judge Ralph G. Thompson (W. D. Okla.).

AJS Establishes Center for Judicial Independence

The American Judicature Society (AJS) has announced it will establish a Center for Judicial Independence "to promote a Judiciary that is free to issue fair and just rulings without bowing to popular and political pressures."

AJS President Robert M. Kaufman said, "Our historic commitment to educating the public about the role of the courts makes us uniquely suited to adopting judicial independence as a cornerstone issue." AJS has been inundated with requests for help with judicial independence issues, Kaufman said, a result of recent efforts to remove from the bench judges who have issued unpopular rulings and to implement judicial term limits. The new center will complement the AJS Elmo B. Hunter Citizens Center for Judicial Selection

and the Center for Judicial Conduct Organizations.

The goals of the Center for Judicial Independence are

- To educate the media, elected officials, and the general public about the importance in a democratic society of a Judiciary that is independent of popular and political pressures;
- To respond to political and other attacks that threaten the independence of judicial decision-making;
- To develop a public constituency to communicate the concerns of the judicial branch to the other branches of government and to the public;
- To provide educational programs, publications, and research, which build public confidence in the courts.

THE THIRD BRANCH

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Photo of Justice Kennedy: Collection, The Supreme Court of the U.S., courtesy The Supreme Court Historical Society. Photograph by Joseph H. Bailey, National Geographic Society

Please direct all inquiries and address changes to *The Third Branch* at the above address.

JUDICIAL MILESTONES

Appointed: James C. Carruth, as U.S. Magistrate Judge, U.S. District Court for the District of Arizona, March 31.

Senior Status: Judge Alan N. Bloch, U.S. District Court for the Western District of Pennsylvania, April 12.

Senior Status: Judge Barbara K. Hackett, U.S. District Court for the Eastern District of Michigan, April 8.

Senior Status: Harry L. Hupp, U.S. District Court of the Central District of California, April 1.

Senior Status: Chief Judge Jackson L. Kiser, U.S. District Court for Western District of Virginia, April 30.

Senior Status: Judge Frank J. Magill, U.S. Court of Appeals for the Eighth Circuit, April 1.

Resignation: Magistrate Judge Kirtland L. Mahlum, U.S. District Court for the Central District of California, March 21.

Retired: Magistrate Judge Roger Curtis McKee, U.S. District Court for the Southern District of California, March 31.

Deceased: Bankruptcy Judge Calvin K. Ashland, U.S. Bankruptcy Court for the Central District of California, April 9.

Deceased: Senior Judge John R. Hargrove, U.S. District Court for the District of Maryland, April 1.

JUDICIAL BOXSCORE

As of May 1, 1997

Courts of Appeals

Vacancies	25
Nominees	8

District Courts

Vacancies	72
Nominees	18

Court of International Trade

Vacancies	2
Nominees	0

Courts with

"Judicial Emergencies"	24
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House Passes Juvenile Crime Control Act

After a lengthy markup by the House Judiciary Committee, H.R. 3, the Juvenile Crime Control Act of 1997, has passed the House. The bill, introduced by Representative Bill McCollum (R-FL), chair of the House Subcommittee on Crime, is intended to combat violent youth crime and increase accountability for juvenile criminal offenses. The legislation, if enacted, would represent a new and unprecedented role for the federal courts.

Although the Judicial Conference has taken no position on H.R. 3, Judge George P. Kazen (S.D. Tex.), chair of the Judicial Conference Committee on Criminal Law, has written to the Judiciary Committee Chair, Representative Henry J. Hyde (R-IL), to express several concerns. The first of those concerns is that the legislation will likely expand federal prosecution of juveniles, which will have a significant impact on the federal Judiciary. H.R. 3 requires each of the 94 U.S. attorneys to designate at least one assistant U.S. attorney, on either a full- or part-time basis, to prosecute "armed violent youth" and to establish an armed youth criminal apprehension task force. Initial estimates conservatively indicate that 94 full-time prosecutors could generate as many as 1,100 to 1,400 criminal cases annually, involving as many as 1,500 to 2,000 juvenile defendants. The current average of juvenile cases reaching federal courts is fewer than 100 annually.

As Kazen noted in his letter, there also are problems detaining federal juveniles during their trials and sentencing hearings because no federal juvenile correctional facilities exist, and there is a chronic shortage of bed space in state and county juvenile facilities. "It is imperative for Congress to recog-




Judge George P. Kazen, chair of the Judicial Conference Committee on Criminal Law

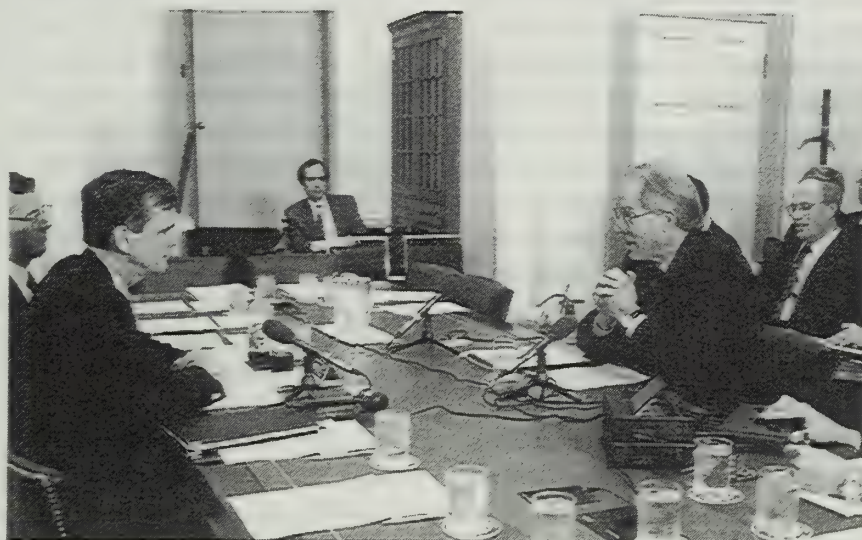
nize the immediate need for additional appropriations for juvenile facilities for federal juveniles if this bill is passed," Kazen wrote.

Increased prosecution of juveniles also changes the nature of supervision. Juveniles present different problems from adults under supervision, requiring a heightened level

of community supervision and different and additional juvenile supervision programs. Many of the community programs used in connection with federal supervision are designed for adults and will not accept juveniles. Most federal probation and pretrial services officers have little experience in handling juvenile offenders and would require additional training.

Finally, if the bill is enacted, Kazen urged Congress to consider an amendment authorizing U.S. magistrate judges to preside over all misdemeanor cases involving juvenile defendants. Currently, magistrate judges lack this authority and they cannot order terms of imprisonment for any juvenile defendant. At its March 1995 meeting, the Judicial Conference approved recommendations to grant magistrate judges the appropriate authority and forwarded these recommendations to Congress. 

Judiciary Budget Presented to Senate



Senator Judd Gregg (R-NH), (left) chair of the Committee on Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, held hearings last month on the Judiciary's budget. Judge John G. Heyburn II (W.D. Ky.) (right) testified as chair of the Judicial Conference Budget Committee.

Juvenile Crime and State and Federal Courts Lead Senator's Concerns

A former Alabama Attorney General and U.S. Attorney for the Southern District of Alabama, Senator Jeff Sessions (R-AL) chairs the Senate Judiciary Committee's Subcommittee on Youth Violence and also serves on the Subcommittee on Administrative Oversight and the Courts.

Q: Bills have been introduced in Congress that will expand federal criminal jurisdiction in the area of juvenile crime. As chairman of the Subcommittee on Youth Violence, what is your view of this proposed expansion?

A: I oppose the federalization of crime generally, and I especially oppose the federalization of juvenile crime. I do, however, support improving federal law so that appropriate juvenile cases can be more easily prosecuted. For example, we need to remove the ability of a young offender to take an interlocutory appeal of a judicial certification that he can be tried as an adult. One example of my opposition to the federalization of juvenile crime concerns an unnecessary proposal to create federal juvenile prosecutors. I have, I believe, received bipartisan support to delete \$100 million for additional assistant U.S. attorneys to specialize in juvenile crime.

If we want to improve the fight against juvenile crime, we need to strengthen the state courts. Finding ways to help the states fight juvenile

crime should clearly be our focus. The prime sponsor of S. 10, Senator Orrin Hatch (R-UT), supports this theory, as does the ranking minority member on the Youth Violence Subcommittee, Senator Joseph Biden (D-DE). I believe the Department of Justice is also in accord. Without a doubt, our primary effort should focus on improving state courts—not increasing the federal government's jurisdiction. While S. 10 contains some strong federal anti-gang legislation, it will not, based on my

"I oppose the federalization of crime generally, and I especially oppose the federalization of juvenile crime. I do, however, support improving federal law so that appropriate juvenile cases can be more easily prosecuted."

experience, result in a significant increase in federal prosecution of juveniles. Instead, it will focus primarily on interstate travel and those who utilize juveniles in their gangs or drug organizations.

Q: As a former U. S. Attorney General, you have extensive experience in both federal and state justice systems. What pressing criminal justice problems face Congress and the courts?

A: Our greatest challenge in criminal justice in America is to improve the state court systems by following the lead of federal courts. State courts are crushed under heavy caseloads, poor bail laws, lack of prison space and lack of modern management and equipment, and weak sentencing laws. There are universally long delays in bringing cases to conclusion in most state court systems. State systems are

an amalgam of many different departments and agencies with no central leadership. Congress should encourage and support reform of state court systems, but we must resist the temptation to micro-manage the states.

Concerning the federal courts, I generally believe that they produce swift and fair case dispositions and certain punishment, incarceration upon conviction and strong sentences. The sentencing guidelines and bail reform enacted under the Reagan Administration have greatly improved the federal criminal system. Few Americans appreciate

how well the federal criminal court system works. If all our courts could reach this level, I am convinced that there would be an immediate and permanent reduction in crime.

Q: The pace of judicial confirmations has been questioned lately. What is your view of the nominations process?

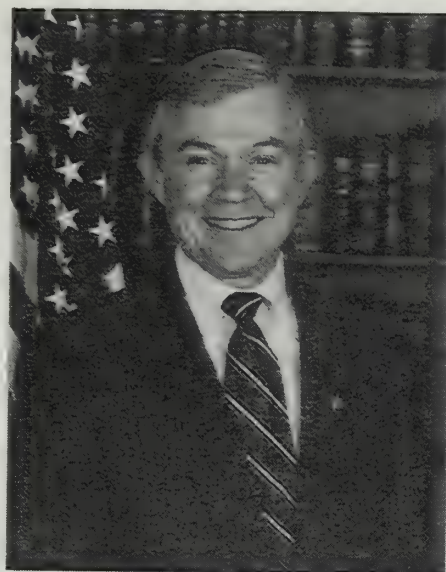
A: The charge that large numbers of judges are being held up is totally false. As of May 1, there are only 99 vacancies out of nearly 1,000 judgeships. Part of the problem has been the slow pace of the White House in nominating judges. As of this date, the President has submitted only 26 nominees for 99 vacancies. Seventy-three judgeships are vacant, but no nominee has been submitted.

The process will soon speed up. I consider the selection of a federal judge to be an extremely significant event. I have had the pleasure to

practice before some of the finest federal judges in America. Practicing before a superb jurist is a wonderful experience. It makes you proud of our legal system. Practicing before a poor judge is no fun. I feel an obligation to exert my best effort to ensure that the President's nominees are evaluated properly. In addition to the "activism" questions, I believe the public has a right to expect integrity, good demeanor, good legal skills, good management abilities and a very strong work ethic. Screening nominees for these qualifications is often time-consuming.

Senate Judiciary Chairman Orrin Hatch (R-UT) has steadfastly stood for a professional and orderly process. He will not be pushed by political forces from either side. Finally, I doubt that the Judiciary needs to be expanded. Some vacancies may not need to be filled, while other districts may need new judgeships. Good case management and efficient allocation of resources is a must. We have to apply our limited resources wisely.

There is a strong sentiment in America calling for a return to more traditional judicial theory. As the courts stay closer to their role as an interpreter of law as opposed to seeing themselves as engines of social change, respect for the law and courts will increase. This is a very important issue to me. The separation of powers is critical to an orderly government. The idea that courts can make what they think are needed changes—because the other branches have failed to act—must end. A legislative or executive decision not to act is no less a decision than one to take action. Both deserve respect by the courts. Our founders established "This Constitution for the United States of America". The Constitution and the laws of the United States must be enforced—whether good or bad. Otherwise, we cease to be lawyers and become unelected legislators.



Senator Jeff Sessions (R-AL)

Q: As a member of the Senate Judiciary Committee Subcommittee on Administrative Oversight of the Courts, you're aware of the record number of bankruptcies being filed in federal court, of the Judiciary's request for additional bankruptcy judges, and the National Bankruptcy Review Commission's ongoing work, including a possible recommendation to give Article III status to bankruptcy judges. What is your assessment of the way bankruptcy is administered in this country?

A: The 29 percent rise in bankruptcies in the last year is startling. A few weeks ago, Senator Grassley's oversight subcommittee heard testimony that bankruptcies increase faster during good economic times than in bad times. We learned also that approximately 20 percent of filers could pay all or a significant part of their debts. I hope to be able to support legislation to allow the courts to easily shift those cases to Chapter 13. As a U. S. attorney, we began a bankruptcy fraud task force to respond to judicial concerns. I believe that task force concept has proved successful and I will urge the Department of Justice to encourage

such prosecution teams nationwide. Certainly, we need to end the idea that fraudulent bankruptcies will never be prosecuted.

I am not persuaded that Article III status should be accorded bankruptcy judges. While I am reluctant to add more bankruptcy judges, unless the caseload trends change, that will be necessary.

My impression is that bankruptcy courts have done a good job in handling their increased caseload without large increases in resources. Congress should examine the matter carefully to consider legislation that will improve case processing.

Q: Another issue addressed by the Subcommittee on Administrative Oversight is the caseloads of the federal courts. While Alabama's Attorney General, you took some significant steps to improve the productivity of that office and at the same time reduce the overall budget. What are your thoughts on the productivity of the federal courts and U. S. attorneys nationwide?

A: The challenge that our courts face are the same as those faced by private business. We must do more with less. We must focus our resources on those areas that are most appropriate for the federal system and apply them in ways that make a difference. This includes more bankruptcy and medical fraud cases, cases that as a practical matter can only be tried in federal courts. More prosecutions of firearms cases are necessary. Firearm cases have dropped from over 4,200 to less than 3,000 since 1991. Crack cocaine prosecutions are up significantly, but powder cases—cocaine comes into the United States as powder—are down significantly. There has been a 10 percent increase in the number of AUSAs, but we have seen a small decrease in prosecutions since 1991-92. We simply must be more productive.

Statutory Approach Favored For Victims' Rights

As Congress prepares to debate how to provide rights to victims of crime throughout the criminal justice system, the Judicial Conference has strongly endorsed a statutory approach over adoption of a victims' rights constitutional amendment.

Proposals to amend the Constitution to provide rights to victims of crime already have been introduced on both sides of Capitol Hill. Senators Jon Kyl (R-AZ) and Diane Feinstein (D-CA) have introduced a victims' rights constitutional amendment as S.J. Res. 6 in the Senate. A similar proposal has been introduced in the House as H.J. Res. 71 by Representative Henry Hyde (R-IL), chair of the House Judiciary Committee.

But Congress is expected to have before it a second type of proposal

on victims' rights. Senators Patrick Leahy (D-VT), ranking minority member of the Senate Judiciary Committee, and Edward Kennedy (D-MA) plan to introduce the Victims of Crime Improvement Act, a statutory alternative to a victims' rights constitutional amendment. Leahy and Kennedy wrote to Judge George P. Kazen, chair of the Conference Criminal Law Committee, asking for the views of the Conference on a draft of the proposed act.

In response to the Leahy-Kennedy letter, the Judicial Conference was polled last month on its views of a constitutional amendment as opposed to a statutory approach. In a letter copied to all members of the Senate Judiciary Committee, Kazen, on behalf of the Conference, wrote that while the Conference had insufficient time to analyze the

specifics of the Leahy-Kennedy statutory alternative and could take no position on those specifics, "as between a statutory enactment and a constitutional amendment, we strongly prefer a statutory approach to this issue."

Kazen noted a number of advantages to the statutory approach. It is significantly more flexible and allows for changes to the law based upon practical experience. It would allow all participants in the federal criminal justice system to gain experience with the principles involved without taking the unusual step of amending the Constitution. It also would avoid significant federal court involvement in the operation of state criminal justice systems. Finally, a statutory approach is more certain and immediate, an advantage to victims.

THE THIRD BRANCH

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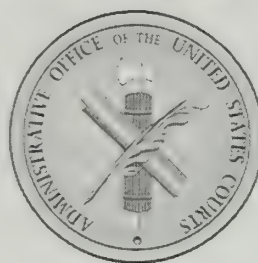
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THE THIRD BRANCH

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June 1997



Leadership Speaks Out on Judicial Issues



Testifying at the House hearing on H.R. 1252 were (left to right), Chief Judge Henry Politz (5th Cir.), former U.S. District Judge Frederick B. Lacey, Steve Burbank of the University of Pennsylvania School of Law, and Judge Ann Williams (N.D. Ill.).

The Chief Justice, Judicial Conference representatives, congressional committee chairs, the White House Counsel, and leading academicians are among the figures who last month actively discussed and debated a wide array of issues of interest to the Judiciary in sessions that took place both on and off Capitol Hill.

A House Judiciary Committee's subcommittee conducted two days of

hearings, focusing on H.R. 1252, the Judicial Reform Act of 1997, and judicial activism, misconduct, and discipline. Across town, the Federal Judges Association (FJA) convened its annual meeting, where it heard presentations on judicial compensation, vacancies, activism, and various legislative measures. The two events, which occurred during the same week, resulted in a constructive series of discussions among leaders

See Hearing on page 2

Budget Chair Voices Cautious Optimism

Judge John G. Heyburn II (W. D. Ky) was appointed to the bench in 1992. He has been a member of the Judicial Conference Budget Committee since 1994 and was named chair of the committee earlier this year.

Q: You have been Budget Committee chair for about five months. What are your initial impressions about the budget process and the Washington scene?

A: My initial impressions have convinced me that much of the cynicism about government today is misplaced. That does not mean that public debate is always as pristine and collegial as one might hope. To be sure, Washington is a place where strongly held beliefs and even egos collide in debate about the most important of our public issues. Sometimes the Judiciary, simply by doing its job, is caught in the crossfire. It is not always possible to separate the Judiciary's appropriation from currently unfolding events. However, I try not to be deterred by the messiness of the process and instead focus on the positive attributes of those involved.

See Interview on page 10

INSIDE

Senate Confirms Three	pg. 2
Support Builds for Pay Adjustment	pg. 5
Final CJRA Report Sent to Congress	pg. 6

Hearing continued from page 1

of all three branches. The following are some of the highlights.

Hearing Held on Judicial Reform Act

At a May 14 hearing, two Judicial Conference representatives testified before the House Judiciary Committee's Subcommittee on Courts and Intellectual Property about the potential impact H.R. 1252 could have on court operations, management and independence.

Subcommittee Chair Howard Coble (R-NC) opened the hearing by stating that the bill "represents a reasoned response to specific instances of judicial abuse that should be corrected. It is an amalgam of five ideas submitted by different members and Senators." The first panel to testify before the subcommittee included several of the House members who co-sponsored portions of the bill.

Representative Henry J. Hyde (R-IL), the sponsor of H.R. 1252, was accompanied on the panel by

Representatives Ed Bryant (R-TN), Zoe Lofgren (D-CA), Melvin L. Watt (D-NC), and Donald A. Manzullo (R-IL). Hyde said his bill "reforms the procedures of the federal courts to ensure fairness in the hearing of cases without stripping jurisdiction, or reclaiming any powers granted by Congress to the lower courts. It does assure that litigants in federal courts will be entitled to fair rules of practice and procedure leading to the due process of their claims."

Representing the Conference at the hearing were Chief Judge Henry

Senate Confirms Three Judges, Leaving Vacancies Near 100

The Senate confirmed three nominees before recessing for Memorial Day. That brought the confirmation total to 5 for the 105th Congress, with Article III vacancies totaling 98 as of June 4.

A week before the Senate vote, Senator Orrin Hatch (R-UT) addressed the Federal Judges Association (FJA), and sought to reassure those present who saw a pending crisis in the vacancy numbers. "I appreciate that there are particular circuits and districts that truly do need additional judges and badly so," said Hatch. "But, overall, let me assure you that we do not at the present have a nationwide vacancy crisis, and that I, as chairman of the Judiciary Committee, will not permit that to happen."


Hatch pointed out that at the beginning of the 102d Congress there were 126 vacancies, and the 101st Congress started out with 109 vacancies. He faulted the Clinton Ad-

ministration for much of the problem. "I am sure you would not know it from the press reports," Hatch said, "but the fact is that there are currently 73 vacancies in our federal system for which the Administration has not even nominated a candidate. I have seen the Senate work a little magic here and there, but even I can't conceive how the Senate can fill judicial vacancies when we don't even have nominees."

White House Counsel Charles Ruff, who also addressed the FJA, described Hatch as "an extraordinary ally," saying, "He cares about this issue. He's done well, I think, in attempting to move the process along and convince his colleagues of the importance of doing so." Ruff said the White House expected, in the next 4 to 5 weeks, to send forward between 15 and 20 more nominations, admitting that part of the burden to fill judicial vacancies was on the White House and that the Administration needs to move more rapidly in bringing names forward.

Part of the problem in this area has been a lack of names suggested to the President for nomination—a problem that according to Ruff affects over 20 vacancies in four states. Ruff also faulted what he termed "the most convoluted and drawn-out procedures of clearance that I

can imagine going through. The very notion that we sent you [the nominees] a 600-page form to fill out and expect you to do it in two or three days and then proceed to sit on it for weeks and months at a time, I'm sure is a daunting prospect to any potential nominee. We will try to do better."

However, Ruff said, "Part of the burden must be on the Senate, to take those nominees, treat them fairly and expeditiously. If they have disagreements, voice them. Bring the matter to a vote and let the nomination go forward, or . . . have the nomination defeated. But the worst possible thing for you who have to bear the burden of vacancies in the courts is simply to have the process drag on." Ruff was not overly optimistic about the possibility of filling vacancies. "The facts of life in a congressional year are such that it can be expected that if we don't have names before the Senate by the July 4th recess, chances of moving those people through the nomination and confirmation process before the Congress goes home at the end of this session are very slim." Ruff said the White House would engage in "as strenuous an effort as we can manage to bring as many names forward by the July 4th deadline as possible." 

A. Politz (5th Cir.), a member of the Judicial Conference and former member of the Committee to Review Circuit Council Conduct and Disability Orders, and Judge Ann Claire Williams (N.D. Ill.), chair of the Committee on Court Administration and Case Management. They addressed the following provisions:

Reassignment of Case as of Right: This provision would allow parties on either side of a civil case to remove the assigned judge—without stating any reason or cause—and have the case transferred to “another appropriate judicial officer.” Each side would be entitled to one reassignment without cause as a matter of right, as long as the motion is brought no later than 20 days after notice of the original assignment of the case. The Judicial Conference opposed a similar bill that was introduced in the House nearly two decades ago because of concerns about judicial independence and the promotion of unfair “judge shopping” by the parties. In recent years, concerns regarding efficient case management and litigation costs and delay have reinforced the Conference’s belief that providing parties with the right to remove a judge for no justifiable reason would be detrimental to the courts, litigants, and the American taxpayer. Frederick B. Lacey, a practicing attorney who was formerly an assistant U.S. attorney and a U.S. district judge for the District of New Jersey, also criticized this section. “Every trial lawyer wants to judge shop,” Lacey told the subcommittee. “The strike promotes this practice, and I think it discredits the judicial system. It also poses a threat to proper and fair case management.”

Proceedings on Complaints Against Judicial Conduct: This provision would amend the Judicial Conduct and Disability Act to provide that any complaint of judicial misconduct

or disability filed under the act shall be referred to another circuit for complaint processing. Representative Ed Bryant (R-TN), who authored this section, said the key problem with the present system is “the appearance of a lack of impartiality, a lack of fairness, an appearance of possible bias, or at worst, partial biased review.”

However, it is the view of the Conference that the changes contemplated in the legislation “would seriously threaten one of the central achievements of the act: the enhancement of the ability of chief judges and circuit councils to resolve genuine problems of misconduct or disability within their own circuits through corrective actions or informal resolutions.” In addition, the Conference said the proposed change would “dramatically increase the costs and burdens of the complaint process for the federal Judiciary, if every complaint must be considered by judges who are hundreds or thousands of miles away.” The National Commission on Judicial Discipline and Removal, which had been created by Congress to study issues related to judicial discipline, in its final report in 1993 concluded that the existing system works well because of its effectiveness in promoting informal solutions to problems of judicial misconduct or disability.

Limits on Court-Imposed Taxes: This provision precludes a district court from ordering or approving any settlement that requires a state or political subdivision of a state to impose, increase, levy, or assess any



Judge Ann Williams (N.D. Ill.) and Subcommittee Chair Howard Coble (R-NC) prior to the hearing.

tax for the purpose of enforcing federal or state common law, statutory, or constitutional right or law, unless the court makes certain findings. The Conference is concerned that this section of the bill is ambiguous as drafted and may intrude on an Article III court’s ability to fashion an effective remedy for a citizen whose rights have been violated.

Interlocutory Appeal of a District Court’s Class Action Certification: This provision would make possible interlocutory appeals of court orders relating to class actions. The Judicial Conference Advisory Committee on Civil Rules is nearing the completion of a five-year comprehensive study of class actions under Rule 23 of the Federal Rules of Civil Procedure. Earlier this month the advisory committee approved proposed

See *Hearing* on page 4

Hearing continued from page 3

amendments that would, among other things, provide an opportunity for an interlocutory appeal of a class action certification. If this issue is to be addressed, the Conference urged that it be done through the customary rulemaking process.

Three-Judge Court for Certain

Injunctions: This provision would require the convening of a district court of three judges to consider applications for injunctions restraining, on the grounds of unconstitutionality, the enforcement, operation, or execution of a state law adopted by referendum. As a matter of policy, the Judicial Conference has concluded that three-judge courts are generally inconsistent with sound judicial administration and an inefficient use of judicial resources.

Coble addressed this section in his introduction saying that long-standing injunctions to Propositions 187 and 209 in California, each issued by a single judge, compelled Representative Sonny Bono (R-CA) to introduce H.R. 1170 during the 104th Congress. This legislation passed the House last term.

Judicial Activism, Misconduct, and Discipline

The Subcommittee on Courts and Intellectual Property conducted a second day of hearings, which were characterized by its chairman, Coble, as a general and free-ranging discussion of historical and recent judicial misconduct and activism. The Conference was not invited to have a witness present, although Judge Randall Rader (Fed. Cir) testified on behalf of the Federal Judges Association, explaining the role of the federal appellate court system in acting as an internal check on abuse. Many of the witnesses were members of Congress, including some who suggested that impeachment exists as a component of our government's system of checks and balances against



Representative Henry J. Hyde (R-IL) addresses the Federal Judges Association meeting.

judicial activism. Leading the charge was House Majority Whip Tom DeLay (R-TX), who said that "impeachment properly applied is a tool for keeping judicial power in check so the Judiciary can in fact be properly independent."

The opposition was lead by Representative Barney Frank (D-MA), who expressed concern about the definition of judicial activism. Frank argued that there has been a rise in judicial activism based on the fact that 12 statutes have been invalidated recently by the Supreme Court, "but if you look at the composition of the court, you can't identify most of its members as activists." Frank also asked whether the subcommittee's meeting was "a hearing in search of a purpose, other than the political one that is being served."

Several witnesses referred to specific cases that gave rise to their concerns about judicial misconduct. Among those mentioned were California voter initiative cases, a Kansas City school tax case, and a Tennessee district judge's handling of several death penalty cases.

"Judges are usurping for their branch or themselves powers that don't belong to them. Congress must hold the Judiciary to its proper and constitutional role and then make them as independent as possible," Representative Bob Barr (R-GA) said. Representative Charles T. Canady (R-FL), while expressing some general reluctance to actively pursue impeachments, indicated that if a judge affirmatively states he or she will not follow the law or if this position can be demonstrated by circumstantial evidence, impeachment might be warranted. Representative Nita Lowey (D-NY) noted that most accusations of judicial activism against individual judges have been motivated more by pure politics than by judicial philosophy. Representative William Delahunt (D-MA) also spoke of the political nature of many of the complaints of activism, and noted the ample remedies outside of impeachment available under the Judicial Conduct and Disability Act of 1980.

Other witnesses at the hearing included constitutional lawyer Bruce Fein; Nicki Gamble, president of the Planned Parenthood League of Massachusetts; Thomas Jipping, director of the Free Congress Foundation's Center for Law and Democracy; Wade Henderson, executive director of the Leadership Conference for Civil Rights; and Roger Pilon, senior fellow and director of the Center for Constitutional Studies at the Cato Institute.

Judiciary Committee Chairs Address Activism Charge


Senator Orrin G. Hatch (R-UT) and Representative Hyde also commented on judicial activism in remarks to the Federal Judges Association (FJA). Hatch emphasized that he did not see the issue of judicial activism as a political one; "I strongly believe, and often have said, that judicial activism is equally objectionable when it comes from

the right as when it comes from the left." While agreeing that it is not always so easy to discern what the written law actually means in a particular case, Hatch said that "when they [judges] read their own preferences and political agendas into the Constitution to strike down legislation duly enacted by elected representatives, judges directly thwart the will of the people."

Hatch noted that some critics of Clinton judicial nominees have urged him to halt the confirmation

of activist judges. However, Hatch told the FJA, "Such a view, in my opinion, invites a constitutionally inappropriate politicization of the confirmation process, and reflects a misunderstanding of the Senate's advise and consent responsibility."

Hyde, in his remarks to the FJA, essentially agreed with his colleague in the Senate. "There are judges who feel that their tenure entitles them to legislate as well as adjudicate and sometimes in egregious fashion," said Hyde. "This naturally irritates

people who are affected by the overreaching, whether it's requiring taxing bodies to raise taxes, or it's running jails, or running school systems, or vacating statewide referenda. We have the obligation and oversight obligation to take a look at these things and to let some sunshine in." Hyde acknowledged, however, that if people feel that a judge's decision is flagrantly wrong they should turn to the appeals court and not the impeachment process for possible remedy. 

Support Builds for Judicial Pay Adjustment

"What the judges are seeking is not in any meaningful sense of the word a pay raise," Chief Justice William H. Rehnquist told the Federal Judges Association (FJA) last month. "What we are seeking is the same sort of cost-of-living adjustment that virtually every other federal employee, and many employees in the private sector, receive annually. It's not designed to improve anyone's standard of living, but simply to enable them to maintain the standard of living which they had when they originally took the job." The Chief Justice said that even if Congress may feel more willing in the light of the recent balanced budget agreement to grant pay raises to itself and to judges, "it would be far better from the judges' point of view to delink the judges from Congress." He also thanked Administrative Office Director Leonidas Ralph Mecham for leading the pay adjustment battle on the Hill with "his customary elan and skill."

At the same meeting, Representative Henry J. Hyde (R-IL) told federal judges that "the notion of improving judicial compensation doesn't take a great deal of insight or brainpower. We want the best

people we can get to be judges, to man the barricades of administering justice." Hyde said he supported delinkage of federal judges' salaries from those of Congress, but warned "it will be a struggle. But we will try because it's only fair, it's only right. And the public will benefit by having judges that are adequately paid or fairly paid . . ."

Senator Orrin G. Hatch (R-UT) echoed Hyde's remarks. "I am a firm believer," said Hatch, "that our federal judges must be compensated adequately in order to maintain the top caliber Judiciary we have historically had. As you may know, I have introduced legislation to delink judges' salaries from Congress's salaries and to bring our judges' pay back in line with where it should be, and I am hopeful that legislation addressing judicial salaries is enacted this Congress. Judges and judicial salaries simply should not be held captive to political agendas." However, Hatch cautioned that fiscal belt-tightening may mean a way must be found to offset any increase in government spending.

Later, at a White House reception, President Clinton told FJA members he favored a COLA for



Judge Barefoot Sanders (N.D. Tex.) with Senator Orrin Hatch (R-UT) at the Federal Judges Association meeting last month.

members of Congress and the Judiciary. Senate Majority Leader Trent Lott (R-MS) also has expressed support for COLAs and for delinkage of judicial and other salaries. In a letter to Director Mecham, Lott wrote that, "Although subject to change, it is my opinion that it will not be able to reach the approximate 9 percent make-up COLA request, but I am committed

See Pay on page 6 

Pay continued from page 5

to providing adequate judicial salaries to attract highly qualified professionals to the ranks of the Judiciary."

In the last few weeks, several members of Congress have signed-on as co-sponsors of H.R. 875 or S. 394, the Judicial Conference-backed pay adjustment measures introduced in Congress. As of June 3, the following Representatives added their names, for a total of 50 co-sponsors.

Nick Rahall (D-WV)

Edward Markey (D-MA)

Zack Wamp (R-TN)

Bud Shuster (R-PA)

Saxby Chambliss (R-GA)

Bob Barr (R-GA)

Jim Kolbe (R-AZ)

Curt Weldon (R-PA)

Carrie Meek (D-FL)

Earl Hilliard (D-AL)

Jon Fox (R-PA)

Sanford D. Bishop, Jr. (D-GA)

James Maloney (D-CT)

Sheila Jackson-Lee (D-TX)

Nita Lowey (D-NY)

Henry Gonzalez (D-TX)

Tom Campbell (R-CA)

Richard Neal (D-MA)

Bill McCollum (R-FL)

Sam Gejdenson (D-CT)

Rod Blagojevich (D-IL)

Jim Turner (D-TX)

Christopher Cannon (R-UT)

Co-sponsors also have been added in support of S. 394, for a total of 19.


They are Senators

Tom Daschle (D-SD)

Dianne Feinstein (D-CA)

Rod Grams (R-MN)

Jeff Bingaman (D-NM)

Joseph Lieberman (D-CT) 

Final Civil Justice Reform Act Report Sent to Congress

Last month, on behalf of the Judicial Conference, Administrative Office Director Leonidas Ralph Mecham submitted the final Civil Justice Reform Act (CJRA) report to the Senate and House Judiciary Committees. The report describes the experience of the federal courts in applying the act's civil litigation cost and delay reduction measures, and includes a series of recommendations by the Conference to ensure the efficient resolution of civil cases in the federal courts. Mecham noted in the transmittal letter that "the CJRA required the most comprehensive review of the civil litigation process ever performed in the federal courts."

Congress enacted the CJRA six years ago to study the causes of cost and delay in civil litigation. The act required all federal district courts to implement civil justice expense and delay reduction plans that would "improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes." The act included a series of case

management principles, guidelines, and techniques for the courts to consider in making their plans and required the Judicial Conference to review pilot court programs and assess whether other districts should be required to implement the programs. A five-year, ten-pilot court study conducted by the RAND Corporation's Institute for Civil Justice formed the basis for the Conference's final report.

The RAND study found that the pilot program per se did not appear to have significant impact on cost or delay reduction because the courts were already following most of the act's principles, guidelines and techniques, and more importantly, the cost of litigation was driven by factors other than judicial case management procedures.

Based on the RAND study, an evaluation by the Federal Judicial Center of differentiated case management systems in the act's ADR demonstration programs, as well as the experiences of all 94 district courts in implementing their cost and delay reduction plans, the Conference made the following recommendations to further the act's goals of efficient case management:

- Continue the CJRA Advisory Group process, which has

proven to be one of the most beneficial aspects of the act by involving litigants and members of the bar in the administration of justice;

- Continue the act's public reporting of caseload management statistics due to their effectiveness in reducing case disposition time;
- Encourage early and firm trial dates and shorter discovery periods in complex civil cases;
- Encourage the effective use of magistrate judges consistent with Recommendation 65 of the *Long Range Plan for the Federal Courts*;
- Increase the role of district chief judges in case management;
- Encourage intercourt and intracircuit judicial assignments to promote efficient case management;
- Increase education regarding efficient case management;
- Where appropriate, encourage the use of electronic technologies in the district courts;

JUNE

- 23-24** Monday-Tuesday
Committee on the Judicial Branch
- 23-24** Monday-Tuesday
Committee on Federal/State Jurisdiction
- 26-28** Thursday-Saturday
Fourth Circuit Conference
- 30-2** Monday-Wednesday
Workshop for District Judges II

JULY

- 9-11** Wednesday-Friday
National Workshop for Magistrate Judges
- 10-12** Thursday-Saturday
Committee on Codes of Conduct
- 14-15** Monday-Tuesday
Committee on the Budget
- 14-15** Monday-Tuesday
Committee on Financial Disclosure
- 21-24** Monday-Thursday
Eighth Circuit Conference
- 28-30** Monday-Wednesday
Workshop for Bankruptcy Judges III

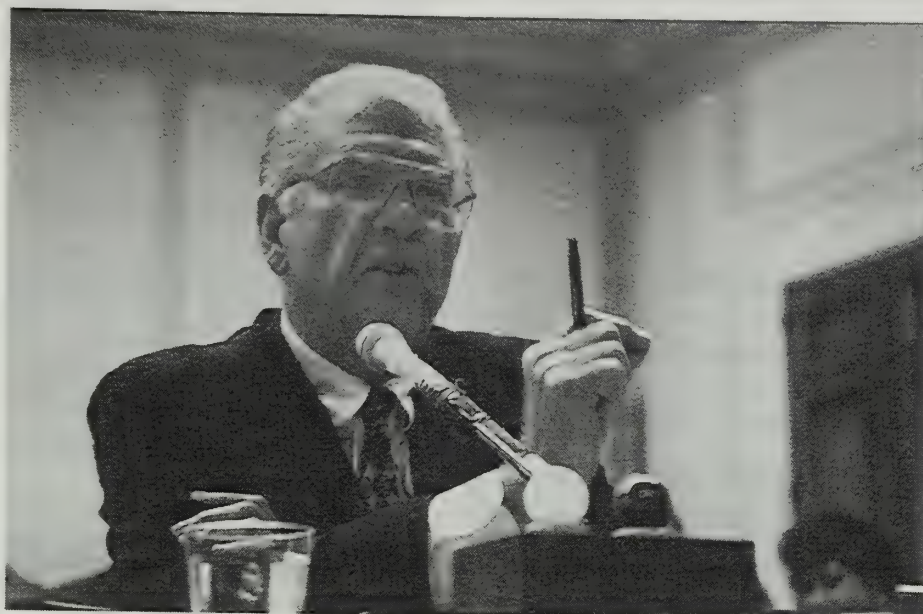
- Encourage prompt executive and congressional action to fill judicial vacancies;
- Encourage Congress to consider the impact legislation will have on court dockets; and
- Encourage Congress to consider the impact on litigation cost and delay if sufficient courtroom space is not available.

The report includes individual evaluations of the act's principles, guidelines and techniques. The Conference endorsed nearly all of these, and noted that almost all have already been adopted by the Judiciary, either through the Federal Rules of Civil Procedure or the 1995 *Long Range Plan for the Federal Courts*. Although the Judiciary has adopted most of the principles, guidelines and techniques in the act, the Judicial Conference declined to adopt the expansion of the act's case management principles and guidelines to other courts as a total package. The Conference's Committee on Court Administration and Case Management, the Advisory Committee on Civil Rules, and other committees as appropriate, will now consider and act on the report's recommendations.

The report concludes with the observation that "[t]he CJRA has raised the consciousness of judges and lawyers and brought about some important shifts in attitude and approach to case management on the part of the bench and bar. The fruits of this consensus are visible not only in actual cost and time reductions, but also in the promotion of many other case and court management innovations that will further improve the efficiency and effectiveness of the entire civil justice system."

The Civil Justice Reform Act of 1990, Final Report will be available on the Judiciary's Internet home page at www.uscourts.gov.

Judiciary Endorses Federal Agency Compliance Act



Judge Steven H. Anderson (10th Cir.), appearing before a House subcommittee, represented the Judicial Conference on H.R. 1544.

Federal agencies generally should be prohibited from adopting a policy of non-acquiescence to the precedent established in a particular federal circuit, a representative of the Judicial Conference told a house subcommittee last month. In addition, the Conference voiced its support for efforts to require agencies to demonstrate special circumstances for re-litigation of an issue in an additional circuit when a precedent already has been established in multiple courts of appeals.

"It is a fundamental principle that an appellate court's decision on a particular point of law is, in the absence of extraordinary circumstances, controlling precedent for other cases raising the same issue in the same judicial circuit," said Judge Stephen H. Anderson (10th Cir.), chair of the Judicial Conference's Committee on Federal-State Jurisdiction. "When an agency chooses to ignore applicable circuit law, the principle of stare decisis is seriously undermined and tension is created between the executive and judicial

branches. Individual litigants are bound by this legal principle. We should expect no less when the litigant is the federal government," Anderson told the House Judiciary Subcommittee on Commercial and Administrative Law.

Pending before the subcommittee is H.R. 1544, the Federal Agency Compliance Act, which was introduced in early May by the subcommittee's chair, Representative George W. Gekas (R-PA), and by ranking minority member Representative Barney Frank (D-MA). "The bill that I have introduced with my distinguished colleague from Massachusetts, Mr. Frank," Gekas said, "attempts to put some order back into the law prohibiting agencies from engaging in a general policy of non-acquiescence. We sought to provide agencies the latitude necessary in the administration of a national program, but we have considered just as importantly the legitimate expectations of persons whose lives are

See *Compliance* on page 8

JUDICIAL MILESTONES

Appointed: Merrick B. Garland, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the D.C. Circuit, April 9.

Appointed: Colleen Kollar-Kotelly, as U.S. District Judge, U.S. District Court for the District of Columbia, May 12.


Elevated: Judge Jimm Larry Hendren, to Chief Judge, U.S. District Court for the Western District of Arkansas, succeeding Judge Franklin H. Waters, May 7.

Elevated: Samuel Grayson Wilson, to Chief Judge, U.S. District Court for

the Western District of Virginia, succeeding Judge Jackson L. Kiser, May 1.

Senior Status: Judge Edward Leavy, U.S. Court of Appeals for the Ninth Circuit, May 19.

Senior Status: Judge Edmund V. Ludwig, U.S. District Court for the Eastern District of Pennsylvania, May 20.

Resigned: Magistrate Judge David L. West, U.S. District Court for the District of Colorado, May 2. 

Compliance continued from page 7

effected by federal agencies." While the bill requires agencies to follow precedent within the same circuit, it also recognizes circumstances where it may be appropriate for an agency to pursue a position contrary to an otherwise applicable court of appeals decision.


Anderson told the subcommittee that the broad yet fair approach to restricting non-acquiescence, as reflected in H.R. 1544, is supported by the Conference for several reasons:

- Intracircuit non-acquiescence undermines the application of adherence to established precedents to subsequent cases arising within the same judicial circuit. This fundamental principle lends stability and predictability to the justice system and provides litigants with a sense of fairness, regardless of their financial means.
- Non-acquiescence creates an inequality between claimants who appeal agency orders and those who do not. Some claimants may

be unaware of a favorable precedent, or lack the ability to challenge an agency's decision in federal court. H.R. 1544 levels the playing field by prohibiting an agency from ignoring case law that may be detrimental to its position but favorable to individual claimants.

- Non-acquiescence drains already limited resources. An agency's litigation of the same issue in additional circuits after repeated unsuccessful attempts to achieve a circuit split is a poor use of judicial resources.

"H.R. 1544 is a necessary and balanced proposal, which will allow litigants, as well as the courts, to conserve resources by avoiding unnecessary re-litigation of issues in federal courts," Anderson said in his testimony.

Witnesses at the hearing included representatives from the Social Security Administration, the Internal Revenue Service, the Department of Justice, the American Bar Association, and Americans for Tax Reform. 

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JUDICIAL BOXSCORE

As of June 1, 1997

Courts of Appeals	
Vacancies	26
Nominees	8
District Courts	
Vacancies	70
Nominees	17
Court of International Trade	
Vacancies	2
Nominees	0
Courts with "Judicial Emergencies"	26


Assistant Director for Public Affairs Appointed

Charles D. Connor has been named to the new post of Assistant Director for Public Affairs at the Administrative Office. Connor is a newly retired captain in the U.S. Navy, where he most recently served as Special Assistant for Public Affairs to the Secretary of the Navy. During his 25-year naval career he served in various communications and public affairs positions in the U.S. and overseas, including deputy chief of information for the Navy, public affairs officer for the Navy's European Forces, deputy director of public affairs for the U.S. Space Command, and special assistant for public affairs to the Commander of the Third Fleet.



Charles D. Connor

Connor earned a BA from the University of Illinois and a JD from Loyola University School of Law.


David A. Sellers has been appointed Deputy Assistant Director for Public Affairs. Sellers has served as the Public Information Officer at the AO for the past 10 years. 

George A. Ray is the new chief of the Administrative Office District Court Administration Division, succeeding Lydia Pelegrin, who has accepted a position as assistant U.S.



George A. Ray

attorney in the Criminal Division for the District of Columbia. Ray begins his new duties July 21.

Ray's service with the federal Judiciary began in September 1973, and he was the chief deputy clerk for the Northern District of California for over a decade. He has served as clerk of court for the Northern District of New York since 1990. Ray is a two-time Director's Award winner, recognized for outstanding leadership in 1993, and for administrative excellence in 1996. He also has been active in the Federal Court Clerks Association and has represented the Second Circuit as a member of the AO's District Clerks Advisory Group. 

Judge Damon J. Keith Receives Thurgood Marshall Award

For long-term contributions to the advancement of civil rights, civil liberties, and human rights in the U.S., Judge Damon J. Keith (6th Cir.) has received the American Bar Association's 1997 Thurgood Marshall Award.

"At a time when the independence of the federal Judiciary is dangerously under political attack, it is an honor to recognize a judge whose career is a monument to a courageous and independent Judiciary," said James E. Coleman Jr., chair of the award committee. Judge Keith not only has been one




Judge Damon J. Keith (6th Cir.)

of the country's most effective federal judges in protecting civil rights and civil liberties, but also has

inspired, as a mentor and by example, other federal judges and a generation of minority and civil rights lawyers to join his quiet crusade. His opinions are inspirations; in the midst of condemning some of the most disgusting behavior and conduct ever to come before a federal judge, he always manages to remind us in terms that are unifying that the Constitution and the rule of law are more than abstractions."

In his career as a federal judge and a lawyer, Keith has dealt with civil rights cases involving school desegregation, voting rights, housing and employment discrimination based upon gender and race, and warrantless surveillance.

The Thurgood Marshall Award was established in 1992; its first recipient was U.S. Supreme Court Justice Thurgood Marshall. 

Interview continued from page 1

I am profoundly impressed by the dedication and professionalism of our own staff at the Administrative Office. The judges who are committee chairs put in long hours without any gain for themselves, motivated only by a strong belief in the judicial system and a commitment to making it work. In Congress, the many elected officials that I have talked with have a deep concern about the Judiciary's role in society. Though they may differ about our specific roles, to a person they seem to have a strong belief in the importance of the Judiciary to a secure and stable society. Congressional staff we deal with are, to a person, knowledgeable and extremely hardworking. Although Congress has rightly criticized us on occasion, all my dealings with the legislative branch have been characterized by good faith and a strong desire to serve the public good.

Q: Budget hearings were recently concluded in the House and Senate. How was the Judiciary's 1998 budget received by Congress?

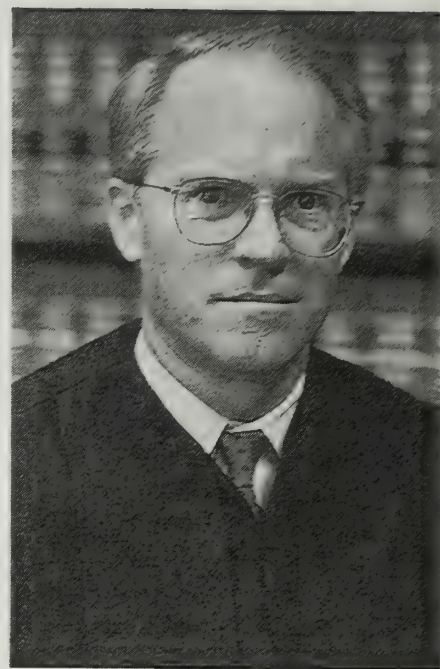
A: Both hearings were quite positive. The chairman of the House Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, Representative Hal Rogers (R-KY), has a deep appreciation for the historic constitutional independence of the Judiciary. At the same time he rightfully insists that public funds be wisely spent. Our two-hour hearing covered a broad range of issues touching upon judicial independence and the need for efficiency in government. Our dialogue was quite constructive. I believe that it will lead to Congress having a better understanding of our work.

Senator Judd Gregg (R-NH), chairman of our Senate Appropriations Subcommittee, has worked with federal Judiciary issues for a much shorter time than Representative Rogers, but has already shown that he is knowledgeable about our budget issues. The Senator and I have had several very constructive meetings. He also understands the importance of the federal Judiciary and wants to be sure that we are spending our appropriations wisely. He is particularly concerned about the apparent growth in the cost of providing defender services, especially capital prosecutions. I was able to provide a logical explanation for the growth and the steps we are taking to improve management of the program.

I am particularly pleased that both the House and Senate hearings were not adversarial in nature. Rather, each represented a constructive and thoughtful dialogue among representatives from the separate branches of government. We are also fortunate that our hearings continue to be non-partisan. We enjoy the support of the ranking Democrats as well—Senator Ernest F. Hollings (D-SC), ranking minority member of the Senate Appropriations Subcommittee, and Representative Alan B. Mollohan (D-WV), ranking minority member of our House Appropriations Subcommittee. All four members appear to want to provide us with sufficient funds to do our job, but within the context of a balanced budget.

Q: What were the primary concerns of the appropriations committees?

A: Thankfully for us, the primary concern of both Representative Rogers and Senator



Judge John G. Heyburn II.

Gregg is that the Judiciary have sufficient funds to perform its essential law enforcement role. Both chairmen understand that the Judiciary does not control its own workload. They are acutely aware that one must keep the federal law enforcement machine in proper balance. They understand that it makes little sense to hire new prosecutors without enough judges, probation officers, and support staff to respond to their efforts.

On the other hand, as Congress attempts to balance the federal budget by the year 2002, it is naturally concerned that the Judiciary explore cost-effective alternatives to doing its job. That includes examining the way we provide educational programs to our judges and staff, the criteria we use for building courthouses and the workload formulas which dictate the number of staff and new judges we request.

Representative Mollohan raised several issues at the hearing—the impact of vacant judgeships, the need for new courthouses, and the cost of defense counsel in capital cases. This last concern, specifically

related to the Oklahoma City bombing cases, appears to be an area of concern to a number of members in both the House and the Senate.

Q: The Congress and White House recently agreed to a blueprint to balance the federal budget by 2002. How do you believe this agreement will affect the Judiciary?

A: We only have the beginning outlines of how the budget agreement will affect the Judiciary's appropriation in FY98 and future years. Predictions about future budgets are not worth the paper on which they are printed since any budget agreement is good only so long as the political will or majority exists to enforce it. Nevertheless, we understand that non-defense discretionary spending is scheduled to increase \$15 billion or approximately 6 percent from FY97 to FY98 (the budget now before Congress). Thus, in the current budget cycle we can expect pressures similar to those of the last few years.

After FY98, however, the growth in that spending is scheduled to decline as follows: FY99, plus 1.1 percent; FY 2000, plus 0.4 percent; FY 2001, minus 0.8 percent; FY 2002, plus 0.4 percent. As you can see, for all practical purposes there will be no increase in non-defense discretionary spending for the four fiscal years after FY98. That does not mean that the Judiciary's appropriation will be capped at FY98 levels. Traditionally, the Judiciary, because of its law enforcement responsibilities, has fared better than the average executive branch agency. However, with less overall funding available for non-defense discretionary programs under the budget agreement, it will undoubtedly mean greater scrutiny of our budget requests. It will be up to the Budget Committee and, indeed, the entire

Judiciary to justify those requests. However, I would trust that civil and criminal law enforcement will continue to be a high priority with Congress.

Q: At its last meeting, the Budget Committee passed a resolution concerning long-range budgeting. Could you describe the resolution and, in light of the balanced-budget agreement, what does this mean for the Third Branch?

A: The Budget Committee felt that it was important to put in writing its two guiding principles. First, the Budget Committee is committed to obtaining the funds necessary for the Judiciary to perform its statutory and constitutional responsibilities. This is vital for a strong and independent Judiciary. Second, among the responsibilities

A: For years, under the leadership of my predecessor, Chief Judge Richard Arnold, the Budget Committee recommended a budget to the Judicial Conference and then presented the approved request to Congress. Because the budget context has changed in recent years, the committees' emphasis may reflect slightly different priorities. However, its role as prescribed by the Judicial Conference remains unchanged.

Q: Congress seems to take special interest in reducing costs throughout the federal government. Has the Judiciary been successful in convincing Congress that we are doing our part in cutting costs?

A: I believe that the Appropriations Committee members

"I believe that the Appropriations Committee members understand well the efforts which the Judicial Conference committees, with the support of the AO, are making to allow the Judiciary to reduce costs and become more efficient."

of a separate and independent branch of government, is that of spending taxpayer dollars wisely. The Judiciary must continue, therefore, a comprehensive effort to assess economies and efficiencies within our own operations. We believe that these two principles establish the basis for a constructive relationship with Congress and for a healthy Third Branch.

Q: What role does the Budget Committee play in the budget-making process for the federal Judiciary? Do you foresee any change in this role under your leadership?

understand well the efforts which the Judicial Conference committees, with the support of the AO, are making to allow the Judiciary to reduce costs and become more efficient. For example, Representative Rogers has been a strong proponent of videoconferencing, and the Judiciary has responded accordingly. Both Representative Rogers and Senator Gregg appreciate that cutting costs is a long-term effort and that the Judiciary is making a sincere effort to do so. In fact, Representative Rogers complimented the Judiciary on the report we submitted last November to Congress on our many cost containment efforts. That report addressed a number of

Judiciary economy and efficiency initiatives—reducing rent costs and enhancing use of automation, to name two. At the same time, they also know that, for the most part, the Judiciary cannot control its workload and the resulting costs.

Q: What role does the Economy Subcommittee of the Budget Committee play in these cost-cutting efforts?

A: In September 1993, the Judicial Conference authorized the formation of the Economy Subcommittee of the Budget Committee. Since that time, members of the subcommittee have worked closely with other conference committees to encourage innovation and efficiency in the budgetary process. This is an essential job in the current budget atmosphere. It is also a delicate one. The role of the Economy Subcommittee is analogous to that of the Office of Management and Budget, a role that is, by definition, less than popular. I am


confident that all involved in this process recognize that this is a joint effort for the good of the entire Judiciary. It is in this spirit that the Economy Subcommittee continues its work with the various committees.

Q: What can the courts do to assist in this effort to make the Judiciary as efficient and productive as possible?

A: This is a good question because it allows me to highlight one of the Judiciary's greatest strengths: experienced, professional and decentralized management. About three years ago, the Judicial Conference approved implementation of a program to decentralize the courts' budgets. By doing so, the Judiciary took a giant step ahead of most other federal agencies in the management of its financial resources. Wise exercise of management discretion is the best way that courts can help the Judiciary. By wisely exercising the decentralized management function;

by making suggestions about better practices; and by returning funds saved through efficient practices, the courts will continue to help the entire Judiciary.

Q: A big issue for the Judiciary in Washington these days is the COLA. How has this impacted your work on the Budget Committee?

A: The judges' COLA is not really a budget issue, as the expense of it is not significant. The FY98 budget request assumes a 2.8 percent COLA, which would cost about \$6 million. We have included that amount in our budget request. However, we need specific statutory authority to raise judicial officer salaries. Knowing this, I have made every effort to underscore its importance in my personal comments at both the Senate and House hearings, by specifically stating that a COLA is vital to an independent Judiciary as envisioned by the Founding Fathers. 

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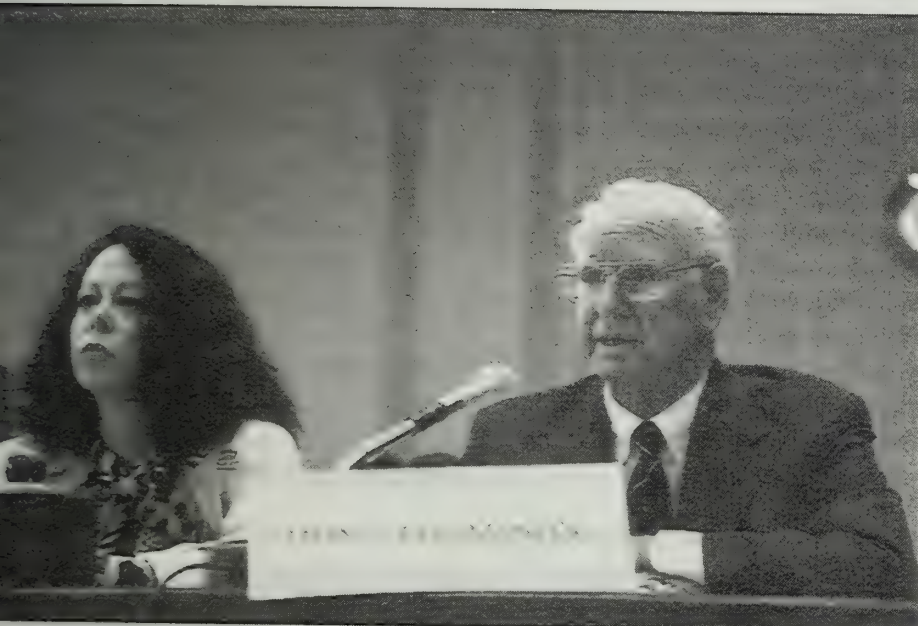
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THE THIRD BRANCH

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Record Level Filings Warrant New Bankruptcy Judgeships



Testifying at the hearing to authorize 18 new bankruptcy judgeships were (left to right) Chief Bankruptcy Judge Tina L. Brozman (S.D. N.Y.) and Judge David R. Thompson (9th Cir.), chair of the Judicial Conference Committee on the Administration of the Bankruptcy System.

A House Judiciary subcommittee last month marked up and reported out to the full committee legislation that will authorize 18 new bankruptcy judgeships to meet the record level of bankruptcies being filed in federal courts nationwide.

"A system, which is receiving excessively large numbers of new cases year after year without also receiving a sufficient number of judicial officers to adjudicate these cases, cannot operate in the manner

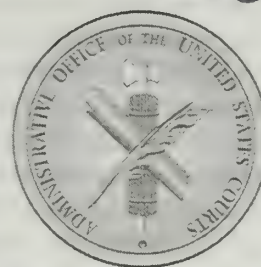
See Judgeships on page 2

INSIDE

Judicial Resources Reviewed in Circuits	pg. 2
Long-term Effects of PLRA Unclear	pg. 5
Victims Rights Approach Weighed	pg. 6

Newsletter
of the
Federal
Courts

Vol. 29
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July 1997



House Links Bills: COLA Attached to Judicial Reform

Two key pieces of legislation became one last month when the House Judiciary Subcommittee on Courts and Intellectual Property marked up and reported out an amended version of H.R. 1252, the Judicial Reform Act of 1997, and attached to it provisions that would favorably affect judges' compensation.

The Judicial Conference opposes several of the provisions contained in H.R. 1252. As reported out of the subcommittee, the bill contains five new provisions, including the delinkage of judicial salaries from that of members of Congress and the repeal of section 140 of P.L. 97-92. H.R. 1252, which is the Republicans' attempt to address perceived acts of "judicial activism," was the subject of a May 14 hearing at which Chief Judge Henry Politz (5th Cir.) and Judge Ann Williams (N.D. Ill.) testified.

The marked-up bill's provisions would

- Require three-judge courts to consider applications for interlocutory or permanent

See COLA on page 4

Judgeships continued from page 1

which the federal Judiciary and Congress envisioned," said Judge David R. Thompson (9th Cir.), chair of the Judicial Conference Committee on the Administration of the Bankruptcy System, at a hearing prior to the markup. "Timely resolution of a bankruptcy case, be it a consumer's or a corporation's, is important to everyone," Thompson said in his testimony. "Delay is a disservice to the rights of the creditors and to the rehabilitation—the fresh start—of the consumer, family farmer, small business, corporation, and municipality."

Thompson appeared before the House Judiciary Subcommittee on Commercial and Administrative Law. The subcommittee was considering H.R. 1596, the Bankruptcy Judgeship Act of 1997. The 18 new judgeships contained in the bill would be located in 14 different judicial districts; 11 of the positions would be created as temporary judgeships, which would be in existence for a minimum of five years. Referring to the temporary judgeships, Thompson said, "We believe this approach, which provides a minimum of five years of additional judgeship time, is a prudent use of

our scarce federal funds: it meets the immediate and foreseeable future needs of our bankruptcy system, yet affords an opportunity to reassess a district whose long-term needs are uncertain."

New bankruptcy judgeships were last created in 1992, when Congress authorized 35 positions. There currently are 326 authorized bankruptcy judgeships. The Judicial Conference has urged that filling of 10 of these judgeships be deferred.

Thompson was accompanied on the panel of witnesses by Chief Bankruptcy Judge Tina L. Brozman (S.D. N.Y.) and Chief Bankruptcy Judge Frank W. Koger (W. D. Mo.), who represents the National Conference of Bankruptcy Judges. Also testifying at the hearing were Michael P. Richman, representing the American Bankruptcy Institute, and Richard L. Wynne of the Los Angeles County Bar Association, who supported additional bankruptcy judgeships in the Central District of California.

The need for additional judicial officers is critical to meet the burgeoning caseload in bankruptcy courts. In 1996, for the first time in history, the number of bankruptcy petitions filed in one year exceeded

one million. This record was followed by two more when the first quarter filings for 1997—311,131—topped the previous number of cases ever filed in one quarter and the second quarter filings for 1997—335,073—were even higher.

While the level of filings clearly justifies the creation of new bankruptcy judgeships, courts constantly are exploring ways to accomplish more with less, Thompson told the subcommittee. For example, Thompson is involved with the Workload Equalization Project sponsored by the Judicial Council of the Court of Appeals for the Ninth Circuit. Under this pilot project, numerous adversary proceedings from districts within a circuit with oppressive caseloads are transferred to volunteer bankruptcy judges in other districts.

Brozman told the committee that the bankruptcy court in the Southern District of New York also has dedicated efforts toward doing more with limited resources. The court, which enjoys a national reputation for expertise in administering so-called "mega" cases, has been innovative in creating guidelines on filing fees, in implementing budgeting committees to review planned

Senate Committee Reviews Judicial Resources in 5th and 11th Circuits

Senator Charles Grassley (R-IA), chair of the Senate Judiciary Committee Subcommittee on Administrative Oversight and the Courts, last month convened the third in a series of unprecedented hearings on the allocation of judicial resources. The hearings have elicited a variety of opinions within the Judiciary.

Grassley's probe comes at a time when the total number of cases being filed in the 12 regional courts of appeals is at an all-time high. In addition, no new Article III judgeships have been created since

December 1990. Of the authorized 179 appellate judgeships, 27 were vacant as of July 1, 1997.

Last month's hearing focused on the 5th and 11th Circuits. The two circuits had been a single circuit, but were split in 1980. At that time the 5th Circuit had 26 judgeships. The 5th now has 17 authorized judgeships; the 11th Circuit has 12. Previously Grassley had looked at the judgeships authorized in the D.C. and 4th Circuits.

"It's become even more apparent that the Judiciary is a large bureau-

cracy that's plagued by the same problems that accompany the other two branches," Grassley said in his opening remarks. "As we all know, bureaucracies have a tendency to grow and grow. Up until now, the Judiciary has been on a one-way glide-path to growth. This has profound consequences for Congress and the American taxpayer."

The single panel of witnesses testifying on the appropriate allocation of judgeships in the 5th and 11th Circuits was composed of Chief Judge Joseph W. Hatchett (11th

Bankruptcy Judgeship Request

1996, The Bankruptcy Judgeship Act of 1997

District	Judgeships	
	Current Authorized	Additional Recommended
D. New York	2	1 Temporary
D. New York	5	1 Temporary
D. New York	9	1 Temporary
D. New York	2	0*
D. New Jersey	8	1 Permanent
D. Pennsylvania	5	1 Temporary
D. Pennsylvania	2	1 Temporary
D. Maryland	4	1 Permanent, 1 Temporary
D. Virginia	5	1 Temporary
D. Mississippi	1	
D. Mississippi	2	1 Temporary**
D. Michigan	4	1 Temporary
D. Tennessee	4	1 Permanent
D. California	6	1 Temporary
D. California	21	4 Permanent
D. Florida	5	1 Temporary

Delaware, the Conference recommends that the existing temporary position in the district be extended for an additional year period.


position also would help in the Northern District Mississippi.

activities in cases for their cost effectiveness, for creating a full-scale mediation program, and for designing and using, with the assistance of the Administrative Office, an electronic filing system using the Internet. But even these efforts cannot substitute for a full complement of judges. Said Brozman, "the increase in our workload has reached the level where an additional judgeship is critical if we are to continue to provide, in the words of the court's mission statement, 'a fair and effective forum for the protection and marshaling of estate assets, the discharge or adjustment of debts, and the timely distribution of property or securities, consistent with the law.'"

Koger told the subcommittee that last year Missouri, what he called "a financially conservative section of the country," had a 35 percent increase in bankruptcy filings, and the state may experience a further 20 percent increase in 1997. "We are getting a deluge of cases," said Koger, "and we are getting more and more complex issues that require quality time by a judge to hear, consider, and hopefully rule correctly. Just

as important is making the individuals who come to our courts feel that they have had a considered and adequate and courteous opportunity to present their problem and have it considered by an arbiter of justice rather than an overworked and harried person who lacks the time to be anything other than an order signer."

Thompson agreed. "There are many aspects to the bankruptcy system. An important one is the minimum number of bankruptcy judges necessary to administer the system today," said Thompson. "I am here today because of the sustained, excessive growth in filings and associated judicial workloads and the urgent need for additional bankruptcy judgeships."

In the Senate, the Subcommittee on Administrative Oversight and the Courts considers judgeship requests. The subcommittee chair, Senator Charles Grassley (R-IA), has asked for information on judges' travel from the 14 courts requesting bankruptcy judgeships. This information may have a bearing on the outcome of the legislation. 



(Photo left to right) Judge Gerald Tjoflat (11th Cir.), Chief Judge Joseph Hatchett (11th Cir.), Judge Patrick Higginbotham (5th Cir.), Judge Edith Jones (5th Cir.) and W. Frank Newton, dean of the Texas Tech University School of Law, testified in the Senate on judicial resource allocations in their circuits.

Cir.), Judge Gerald Tjoflat (11th Cir.), Judge Patrick Higginbotham (5th Cir.), Judge Edith Jones (5th Cir.), and W. Frank Newton, dean and professor of law at the Texas Tech University School of Law.

Hatchett told the subcommittee that, in his view, "in order to serve the public with the excellence it expects and deserves, the 11th Circuit needs more active judges. The court should expand in a limited fashion, from 12 to 15 members." Although the circuit has taken several steps for keeping up with its workload, including hiring a large staff of attorneys, enlisting the

5th and 11th continued on page 9

injunctions restraining, on the grounds of unconstitutionality, the enforcement, execution, or operation of a state law adopted by referendum. Judicial Conference policy finds the use of three-judge courts to be inconsistent with sound judicial administration.

- Authorize a court of appeals to permit, at its discretion, an appeal by either party from a district court's class action certification decision. In June, the Judicial Conference Committee on Rules of Practice and Procedure approved for transmission to the Conference a recommendation from its Advisory Committee on Civil Rules to amend Federal Rule of Civil Procedure 23(f), to authorize the interlocutory appeal of class action certification rulings. The Judicial Conference opposes this statutory change on the ground that it would circumvent the Rules Enabling Act.
- Refer complaints of judicial misconduct or disability to another judicial circuit for processing. As amended at markup, the provision would allow the chief judge to dismiss complaints as frivolous, as related to the merits of a decision or ruling, or as not in conformity with the statutory requirements. The chief judge could not dismiss a complaint based on corrective action or appoint a special committee to investigate the complaint—those actions could only be taken by the chief judge of another circuit upon transfer of the complaint. The Judicial Conference opposes transfer of complaints of judicial misconduct or disability to another circuit.
- Limit a federal court's ability to enter orders or approve settlements that require a state or local government to impose, in-


crease, levy, or assess a tax for the purpose of complying with the order, unless the court makes certain findings. In markup, an amendment was accepted narrowing the scope of the bill to orders or settlements that "expressly direct" any state or political subdivision of a state to impose, increase, levy, or assess any tax. However, there are indications the provision may revert to its original language. The Judicial Conference opposes limitations on the remedial powers of courts.

- Allow a party to a civil case in a district court to bring a motion to reassign, without cause as a matter of right, the case to another appropriate judicial officer. In markup, the provision was amended so that the practice would be required in 21 district courts with the largest number of authorized district judgeships, and the requirement would sunset five years from the date of enactment. The Federal Judicial Center would be required to monitor the practice and report annually to Congress on its findings. It is expected that at the full committee an effort will be made to expand the right to criminal cases. The Judicial Conference opposed a similar House bill introduced nearly 20 years ago because of concerns about judicial independence and the promotion of "judge shopping" by parties.

At the mark-up the subcommittee added provisions that would do the following:

- Require random assignment of all habeas corpus cases in a given judicial district.
- Authorize the presiding judge or justice of an appellate court or the Supreme Court, to allow cameras in the court during

court proceedings. Presently, authority to authorize cameras in the courts of appeals lies with the circuit judicial councils.

- Repeal section 140 of P.L. 97-92 and delink judges' salaries from those of members of Congress by tying them to the COLAs received by employees on the General Schedule. The provision does not provide the 9.6 percent catch-up COLA requested by the Judicial Conference.
- Provide original jurisdiction in the district courts of any civil actions involving minimal diversity between adverse parties that arise from a single accident, "where at least 25 natural persons have either died or incurred injury in the accident at a discrete location and, in the case of injury, the injury has resulted in damages that exceed \$50,000 per person, exclusive of interest and costs." The provision is intended to address single event mass tort cases, such as aircraft accidents or hotel fires by consolidating such actions. The Judicial Conference supports this multiparty-multiforum provision, which passed the House in the early 1990s.
- Extend from 30 to 60 days the deadline for appeals by the Office of Personnel Management from decisions taken by the Merit Systems Protection Board. These appeals go to the Court of Appeals for the Federal Circuit. The Judicial Conference has no position on this provision. 


Senate Hears Concerns on Judicial Activism

A month after a House Judiciary Committee subcommittee conducted a hearing on "judicial activism," the Senate Judiciary Committee's Subcommittee on the Constitution, Federalism, and Property Rights held the first of what is expected to be two hearings on the same topic. No representatives from the federal Judiciary were asked to testify; witnesses included C. Boyden Gray, former White House Counsel to President Bush, and former U.S. Attorney General Edwin Meese III.

Senate subcommittee chair, Senator John D. Ashcroft (R-MO), emphasized in his opening statement that although critics suggest that the attack on judicial activism is just "a thinly-veiled attack on judges appointed by Democrats," he is committed to eliminating judicial activism "without regard to whether my party appointed the judges or whether I like the outcome in a particular case as a policy matter." Ashcroft defined judicial activism in terms of "judges ignoring the text and implementing their own policy agendas."

Senator Orrin Hatch (R-UT), the Judiciary Committee chair and a member of the subcommittee, defined judicial activism as a matter of important constitutional principle, saying "when unelected, life-tenured judges decide cases based on their own policy preferences, instead of what the law requires, they remove entire spheres of policymaking from the democratic process. This strikes at the heart of constitutionalism and ultimately undermines our very system of democratic government." Hatch said that Congress has an obligation to examine the proper

role of the courts and this should not be seen as a threat to judicial independence, and hoped that "the participants in, and observers of, this examination, are able to distinguish between reasoned inquiry regarding constitutional principle, as opposed to an attack on judicial independence or hostility to the courts generally." Noting that he has introduced legislation to raise judicial salaries and is planning to introduce legislation to enhance the penalties for threats against judicial officers, Hatch concluded, "In short, while judicial activists have no greater foe than myself, the Judiciary generally, and the principle of judicial independence, has no greater supporter than myself."

Meese, who currently is a fellow at the Heritage Foundation, criticized judges for taking on broad public policy issues. "In many cases the Supreme Court and other federal judicial bodies have not only exceeded their constitutional limits but have challenged the principle of federalism, which should protect the balance of power between the national government and the governments of the states." Meese said activist court decisions "have undermined nearly every aspect of public policy." He cited as examples, *United Steelworkers of America v. Weber* (1979), as allowing racial preferences and quotas; *Goldberg v. Kelly* (1970) as creating a right to public welfare assistance; *Mapp v. Ohio* (1961) in hampering criminal prosecution by requiring state courts to exclude from criminal cases any evidence found during an unreasonable search or seizure; *Griggs v. Duke Power Co.* (1971) as lowering hiring standards for the U.S. workforce; *Roe v. Wade* (1973) as discovering a right to abortion; and *Romer v. Evans* (1996) as overturning state referenda. 

Long-term Effects of Prisoner Litigation Reform Act Not Yet Clear

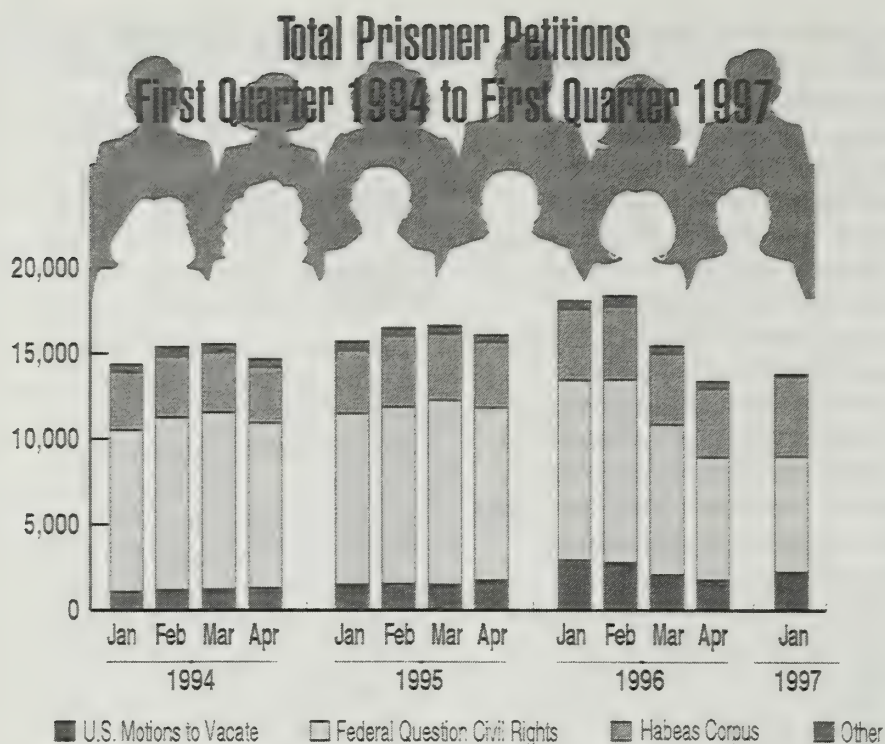
Just months after the Prisoner Litigation Reform Act (PLRA) was signed into law (P.L. 104-134) in April 1996, federal question civil-rights prisoner petitions declined to their lowest level in five years. Whether the PLRA was responsible for this decrease, and if so, whether the downward trend will continue, are questions that cannot yet be fully answered.

The PLRA was intended to limit a prisoner's ability in non-habeas cases to file in forma pauperis (IFP) petitions that are frivolous, malicious, or untrue. Among other reforms, the act changed federal court procedures for filing and reviewing IFP petitions, placing limits on the number of non-meritorious IFP claims, and making prisoners pay filing fees if funds are available.

During fiscal years 1992 to 1996, total prisoner petitions increased 41 percent, from 48,423 to 68,235. Filings usually ranged between 12,000 and 16,000 per quarter. As the PLRA moved through Congress last year, the number of prisoner petitions filed, including civil rights cases, began to increase, perhaps as prisoners, aware of the legislation, filed petitions in anticipation of changes in procedures and increases in filing fees. Filings peaked at about 18,000 cases during the second quarter of calendar year 1996 (April 1 through June 30, 1996).

At the same time, there was a 62 percent increase in motions to vacate sentences during fiscal year 1996, resulting from the 1995 Supreme Court ruling in *Bailey v. United States* (116 S.Ct. 501). Bailey

See Reform on page 6



Note: Federal Question civil rights includes prison condition cases.

Reform continued from page 5

established that enhanced penalties for using a firearm during a drug trafficking offense or crime of violence could not be applied unless a defendant actually used a weapon in committing the crime.

The PLRA was signed into law April 26, 1996, as part of the omnibus budget reconciliation legislation, and by the third quarter of calendar year 1996, the number of prisoner petitions had begun to decline. For calendar year 1996, civil rights prisoner petitions fell by almost 4,000 cases, a 9 percent decrease. However, during the same time period, motions to vacate sentence increased by nearly 3,300 and habeas corpus petitions rose by almost 1,100 cases. Overall, total prisoner petitions increased 1 percent.

According to statistical analysts, long-term effects of PLRA will not be clear until after at least one year's data have been collected and analyzed. Until then, it is premature to say whether the decline in civil rights prisoner petitions will continue.

The PLRA prohibits prisoners from filing more than three IFP petitions if the first three were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief could be granted. However, a prisoner can file additional claims if he or she is "under imminent threat of serious bodily injury."

Under the PLRA, prisoners filing IFP actions also must submit certified copies of their prison trust fund account statements for the six-month period immediately before filing the petitions, as well as affidavits listing all assets. If a prisoner has insufficient funds, the court must collect an initial partial filing fee of 20 percent of the average monthly deposit in the prisoners' account or the average monthly balance in the prisoners' account for the previous six-month period, whichever is greater. The prisoner is then required to pay to the court 20 percent of his or her monthly income, whenever it exceeds \$10, until the filing fee is paid. ⚖️

House Weighs Approach to Victims' Rights

Should Congress act on a crime victims' rights initiative, the Judicial Conference strongly urges that it consider a statutory approach as opposed to a constitutional amendment, a representative of the Conference told the House Judiciary Committee last month.

"A statutory approach would allow all participants in the federal criminal justice system to gain experience with the principles involved without taking the unusual step of amending our nation's fundamental legal charter, with its concomitant applications to the various state systems," said Chief Judge George P. Kazen (S.D. Tex.), chair of the Conference Committee on Criminal Law. He was accompanied at the hearing by Judge Wm. Terrell Hodges (M.D. Fla.), chair of the Conference Executive Committee.

House Judiciary Committee Chair Henry Hyde (R-IL.) acknowledged that there may be some problems with a constitutional amendment. "I wouldn't be for a constitutional amendment if it got in the way of the effective administration of justice," he said. "I don't want to encumber the system, but at the same time, I'm most sympathetic to victims."

In March 1997, the Judicial Conference resolved to take no position at that time on the enactment of a victims' rights constitutional amendment, although it subsequently voiced its strong preference for a statutory approach as opposed to a constitutional amendment. The Conference also has taken no formal position on H.R. 1322, the Victims' Rights Constitutional Amendment Implementation

JULY

9-11 Wednesday-Friday
Mega Workshop for U.S. Magistrate Judges

10-12 Thursday-Saturday
Committee on Codes of Conduct

14-15 Monday-Tuesday
Committee on the Budget

14-15 Monday-Tuesday
Committee on Financial Disclosure

17 Thursday
Supreme Court Update Satellite Videoseminar

18 Friday
Committee on the Judicial Branch

21-24 Monday-Thursday
Eighth Circuit Conference

28-30 Monday-Wednesday
Workshop for Bankruptcy Judges III

AUGUST

13-15 Wednesday-Friday
Executive Committee

18-19 Monday-Tuesday
Ninth Circuit Conference

25-26 Monday-Tuesday
Seminar for Bankruptcy Appellate Panel Judges

DIRECTOR, APPELLATE MEDIATION PROGRAM

The judges of the U. S. Court of Appeals for the Third Circuit invite applications from qualified persons for the position of Director of the Appellate Mediation Program. The purpose of the Appellate Mediation Program is to facilitate settlement and otherwise assist the expeditious handling of the appellate caseload. The program was designed to maximize both judicial economy and cost savings to the parties. The program is governed by Fed. R. App. P. 33 and the court's June 8, 1994, per curiam order, effective August 1, 1994. Applicants must be graduates of an accredited law school, be admitted to practice before the highest court of a state or territory of the United States, have knowledge of and experience working with the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure, and possess substantial legal analytical skills and aptitude for collaborative problem-solving and consensus building. At least 15 years of post-graduate experience, a substantial portion of which involved trial and appellate work either in state or federal courts, are required. Actual mediation or arbitration experience is also preferred. Application may be made by sending six copies of a resume and supporting information evidencing an applicant's particular qualifications to Ms. Toby Slawsky, Circuit Executive, Room 22409, U. S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106. The salary range for this position is \$89,200 to \$115,964, depending on experience. The deadline for applications is **Monday, August 11, 1997**.

BANKRUPTCY JUDGE, DISTRICT OF NEW HAMPSHIRE

Applications for the position of U. S. Bankruptcy Judge for the District of New Hampshire at Manchester, New Hampshire, for a 14-year appointment at an annual salary of \$122,912 are now being accepted. To serve in this position, person must be or must become a New Hampshire resident within 3 months of appointment. This requirement may be waived by the appointing authority upon a showing of good cause. Only those persons whose character, experience, ability, and impartiality qualify them to serve in the federal judiciary should apply. To apply, please send application form and full resume showing complete legal experience by **August 1, 1997**, to Vincent Flanagan, Circuit Executive for the First Circuit, 1425 John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109. Applications forms may be obtained from the circuit executive's office or the bankruptcy clerk's office in Manchester, New Hampshire. For further information, call Mr. Flanagan at (617) 223-9613.

BANKRUPTCY JUDGE, CENTRAL DISTRICT OF CALIFORNIA

The U.S. Court of Appeals for the Ninth Circuit invites applications from highly qualified candidates for the position of Bankruptcy Judge for the Central District of California. The person selected for this position will maintain chambers in Los Angeles, but will be expected to hear a significant number of cases from the Riverside Division. Travel to Riverside may be required. The term of office is 14 years. The current salary is \$122,912 per annum. Basic qualifications for consideration include (1) admission to practice before the highest court of at least one state or the District of Columbia; (2) membership in good standing in every bar in which membership is held; and (3) at least five years of legal practice experience. An application form may be obtained by calling, writing, or faxing a request to Office of the Circuit Executive, P.O. Box 193939, San Francisco, California 94119-3939. Telephone: (415) 556-6100. Fax: (415) 556-6179. It is also possible to download the application from the court's website at www.c9.uscourts.gov. All applications must be in the format required by the Ninth Circuit. Deadline for receipt of all completed application materials: **5 p.m. PDT—Friday August 1, 1997**.

BANKRUPTCY JUDGE, DISTRICT OF OREGON

The U.S. Court of Appeals for the Ninth Circuit invites applications from highly qualified candidates for the position of Bankruptcy Judge for the District of Oregon. The person selected for this position will maintain chambers in Portland. The position is expected to be filled in February 1998. The term of office is 14 years. The current salary is \$122,912 per annum. Basic qualifications for consideration include (1) admission to practice before the highest court of at least one state or the District of Columbia; (2) membership in good standing in every bar in which membership is held; and (3) at least five years of legal practice experience. An application form may be obtained by calling, writing, or faxing a request to Office of the Circuit Executive, P. O. Box 193939, San Francisco, California 94119-3939. Telephone: (415) 556-6100. Fax: (415) 556-6179. It is also possible to download the application from the court's website at www.c9.uscourts.gov. All applications must be in the format required by the Ninth Circuit. Deadline for receipt of all completed application materials: **5 p.m. PDT—Friday, August 1, 1997**.

Act of 1997. In his testimony, Kazen noted that H.R. 1322, although introduced as an implementing statute for a constitutional amendment, potentially could be crafted as the basis for a statutory approach to the issue of victims' rights.

While H.J. Res. 71, the proposed constitutional amendment, appears to have less potential to adversely impact the federal Judiciary than previous proposed constitutional amendments, the Conference does have a number of fundamental concerns, Kazen said. Among the most important are the kinds of crimes to which the amendment will apply, the remedies for violations of the proposed rights, the implications that enforcement of the proposed rights have for our federal system, the need for exceptions to the proposed rights necessitated by the considerations of the administration of justice, speedy trial rights of victims, and the allocation of responsibility for providing notice to victims.

"The members of the federal Judiciary, like all Americans, share a profound concern for the victims of crime. Neither judges nor their loved ones are immune from the results of criminal activity," Kazen said in his testimony. "However, we believe that the interests of crime victims are best served by a system which will provide adequate protection for the rights of victims while balancing the need to ensure a fair trial for persons accused of a crime but who are presumed to be innocent. That is our goal. It is one we should share together."

Should Congress decide to act on a crime victims' rights measure, Kazen concluded, a statutory approach offers a number of advantages. "It would more easily accommodate a measured approach, and allow for fine tuning if deemed necessary or desirable by Congress after the various proposed concepts are applied in actual cases across the




(Photo left to right) Chief Judge George P. Kazen (S.D. Tex.), chair of the Judicial Conference Committee on Criminal Law, and Judge Wm. Terrell Hodges (M.D. Fla.), chair of the Conference Executive Committee, appeared before the House Judiciary Committee to testify on the crime victims' rights initiative.

country. At that point, Congress would have a much clearer picture of which concepts are effective, which are not, and which might actually be counterproductive," Kazen told the House Judiciary Committee.

Also testifying at the hearing was Attorney General Janet Reno, who said that a constitutional amendment provides the best means to protect the rights of crime victims. "Unless the Constitution is amended to ensure basic rights to crime victims, we will never correct the existing imbalance in the country between defendants' constitutional rights and the current haphazard patchwork of victims' rights," she said in her testimony.

Representing the Conference of Chief Justices at the hearing was Chief Justice Joseph R. Weisberger of the Supreme Court of Rhode Island. He acknowledged the need to preserve the rights of victims of crime and noted that every state has a statute dealing with the issue and 29 states have related constitutional provisions. "If the search is for a single settled law, the goal will not

be achieved through a federal constitutional amendment," Weisberger said. "Preempting each state's existing laws in favor of a broad federal law will create additional complexities and unpredictability for litigation in both state and federal courts, while unnecessarily depriving victims of crime of the thoughtfully reasoned principles and procedures already being developed carefully at the state level." 

House Approves Study of Division of Courts of Appeals

Last month the House passed H.R. 908, a bill that would establish a Commission on Structural Alternatives for the Federal Courts of Appeals. The measure is now before the Senate. Meanwhile, it is believed

See Study on page 8


Study continued from page 7

Senator Ted Stevens (R-AK) intends to offer, at some point during the appropriations process, an amendment to divide the 9th Circuit.

The commission would study the present division of the judicial circuits, with particular reference to the 9th Circuit. The commission would make recommendations to Congress and the President for such changes in circuit boundaries or structure "as may be appropriate for the expeditious and effective disposition of the caseload of the federal courts of appeals, consistent with fundamental concepts of fairness and due process."

"H.R. 908 was introduced in response to recurring attempts to divide the largest of the federal judicial circuits, the Ninth," said Representative Howard Coble (R-NC), who sponsored the legislation. "However, if properly implemented, the commission proposal represents a sound approach to a problem of national concern, and that is the explosive growth in the caseload of all of the courts of appeals. The time is right . . . for a careful, objective study aimed at determining whether

that structure can adequately serve the needs of the 21st Century." According to Coble, the commission is the first of its kind since the Commission on Revision of the Federal Court Appellate System, also known as the Hruska Commission, which completed its work in 1975. Representative Henry J. Hyde (R-IL), who also supports the bill, noted that in 1990 the Federal Courts Study Committee concluded that the appellate courts were experiencing a crisis of volume, and the committee proposed, but did not endorse, several structural alternatives. Hyde said the proposed commission would take up where the study committee left off, and that the commission's bipartisan structure would guarantee a fair process.

The commission would be composed of 10 members, with the President and Chief Justice each appointing one member, and the Senate Majority Leader, Senate Minority Leader, the House Speaker, and the House Minority Leader each appointing two members. Their report would be due no later than 18 months after the sixth commission member is appointed. 

JUDICIAL MILESTONES

Appointed: Larry A. Burns, as U.S. Magistrate Judge, U.S. District Court for the Southern District of California, June 6.

Appointed: Docia L. Dalby, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Louisiana, May 16.

Appointed: James Larson, as U.S. Magistrate Judge, U.S. District Court for the Northern District of California, May 28.

Appointed: Ian H. Levin, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Illinois, May 27.


Appointed: Terrence L. Michael, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Oklahoma, June 9.

Elevated: Judge Edward D. Davis, to Chief Judge, U.S. District Court for the Southern District of Florida, succeeding Chief Judge Norman C. Roettger, Jr., June 5.

Senior Status: Judge Joseph J. Longobardi, U.S. District Court for the District of Delaware, June 15.

Senior Status: Judge Norman C. Roettger, Jr., U.S. District Court for the Southern District of Florida, June 5.

Senior Status: Chief Judge David K. Winder, U.S. District Court for the District of Utah, June 8.

Retired: Bankruptcy Judge Mickey Dan Wilson, U.S. Bankruptcy Court for the Northern District of Oklahoma, May 31. 

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of July 1, 1997

Courts of Appeals	
Vacancies	27
Nominees	11
District Courts	
Vacancies	73
Nominees	22
Court of International Trade	
Vacancies	2
Nominees	0
Courts with "Judicial Emergencies"	30


5th and 11th continued from page 3
services of visiting judges, and hiring more law clerks, Hatchett said that the court is not serving the public with the same standard of excellence that it provided in the past.

Tjoflat, however, argued that the solution was not to add judgeships but to give judges more support, including additional staff and automation resources, which would allow judges to use their time as efficiently as possible.

In the 5th Circuit, where the Judicial Conference and the court of appeals have recommended the addition of a new court of appeals judgeship, both Higginbotham and Jones argued against an increase in the number of active judges. "I am persuaded," said Higginbotham, "that we have a sufficient number of active judges to perform our work properly, and that additional judgeships should not be created on the Court of Appeals of the 5th Circuit. I am also of the same view regarding the Northern District of Texas and the Southern District of Texas, districts whose workloads I have examined in the course of my work."

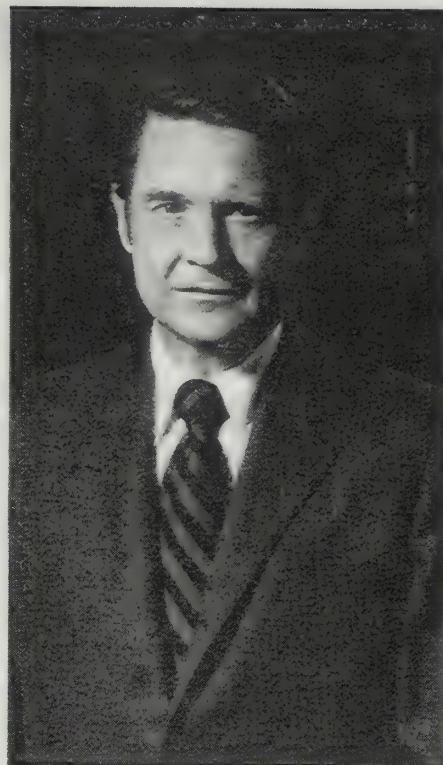
Jones added, "We handle our caseload, the second largest in the nation per judges, more efficiently than most federal appellate courts. The nominal increase in our caseload is largely attributable to prisoner civil rights and habeas appeals and direct criminal appeals, which are disposed of fairly and timely with the assistance of judicial staff. We need no new appellate judges on the 5th Circuit."

Newton disagreed, cautioning that the increasing workload, even if handled efficiently, risked turning appellate judges into administrators. "By any standard," said Newton, "the work of our appellate federal courts is losing the traditional hallmarks which underlie the federal principle of judging and acquiring the look of simply case processing."

A Judicial Conference-backed Senate bill, S. 678, would create 12 additional permanent judgeships and 5 temporary judgeships in the courts of appeals; 24 additional permanent judgeships and 12 temporary judgeships for the district courts. One of those new judgeships would be in the 5th Circuit. No new judgeships are recommended for the 11th Circuit by the Judicial Conference. 


Webster to Chair Commission

Former federal judge William H. Webster has been named chair of the Commission on the Advancement of Federal Law Enforcement by Chief Justice William H. Rehnquist. The commission, which was established by the Antiterrorism and Effective Death Penalty Act (P.L. 104-1320) in the wake of the Oklahoma City bombing and the Waco, Texas, incident, will review and make recommendations to Congress on federal law-enforcement priorities for the 21st Century, including federal law-enforcement capability to investigate and deter adequately the threat of terrorism in the United States. The commission also will evaluate the manner in which significant federal criminal law-enforcement operations are conceived, planned, and coordinated; the standards and procedures used by federal law-enforcement to carry out law enforcement operations and their compatibility on an interagency basis; the degree of assistance, training, education, and other human resource management assets devoted to increasing professionalism for federal law-enforcement officers; and the necessity for the present number of federal law-enforcement agencies and units.



William H. Webster

The other members of the five-member commission are Victoria Toensing, a District of Columbia criminal defense lawyer, appointed by the Speaker of the House; Robert M. Stewart, a South Carolina law-enforcement officer, appointed by the President Pro Tempore of the Senate; Donald C. Dahlin, chair of the Department of Political Science at the University of South Dakota, appointed by the Minority Leader of the Senate; and Gilbert G. Gallegos, national president of the Fraternal Order of Police, appointed by the House Minority Leader.

Webster was the Director of the Central Intelligence Agency from May 1987 until September 1991. Prior to that, he was the Director of the Federal Bureau of Investigation from 1978 until 1987. In 1970, he was appointed to the U.S. District Court for the Eastern District of Missouri, and in 1973 he was elevated to the U.S. Court of Appeals for the 8th Circuit. 

Judge Kazen Maps Plan for Criminal Law Committee

Chief Judge George P. Kazen was appointed to the U.S. District Court in the Southern District of Texas in 1979. He has been chair of the Judicial Conference Committee on Criminal Law since October 1996.

Q: How does the Criminal Law Committee function?

A: The Criminal Law Committee is the result of the merger some years ago of two committees: the Probation Committee and the Criminal Law Committee. The committee functions in three separate, but not unrelated, areas. And that's how I've structured the subcommittees. One deals with internal programs relating to the administration of the Administrative Office's Federal Corrections and Supervision Division, the second handles sentencing guidelines, and the third monitors criminal law issues. Every judge on the Criminal Law Committee sits on one of those subcommittees, and I have three excellent subcommittee chairs. They are Judge Randy Butler of Alabama, Judge Phil Gilbert of Illinois, and Judge Richard Arcara of New York.

Whenever we have a matter to consider, I'll assign it to the appropriate subcommittee. They will work together on a recommendation to the full committee. When we get to the full semi-annual committee meeting, the subcommittee members are pretty knowledgeable about the topic. This facilitates the discussion with the whole group. The subcommittee members develop an expertise and stay very current in their area. That helps me to spread the

load a little bit and, as a result, we've had some excellent meetings and have been able to cover our material efficiently.

Q: Can you tell us something about the various projects and issues the committee is considering and has worked on?

A: For example, we recently monitored the development of a Risk Prediction Index (RPI) developed by the Federal Judicial Center at the request of the Criminal Law Committee. The RPI is a new tool to predict recidivism though a checklist that helps decide which offenders require more intensive supervision than others.

We recently worked on revising the firearms policy for probation and pretrial services officers, pertaining to when they can carry firearms, and what type of ammunition is approved.

At the prompting of the Budget Committee, we agreed to undertake a study of the economic impact of maintaining separate pretrial services offices with a view toward economies. This appears to be the hottest issue, internally, right now.

Q: Why do you think the pretrial services office study has generated so much debate?

A: The issue is controversial because people worry about whether their function, especially the pretrial function, will continue to be recognized and supported the same way in combined offices as in separate offices.

The Criminal Law Committee commissioned a study, which we have just approved and are sending to the Conference. It lays out the history of the issue, and it attempts to

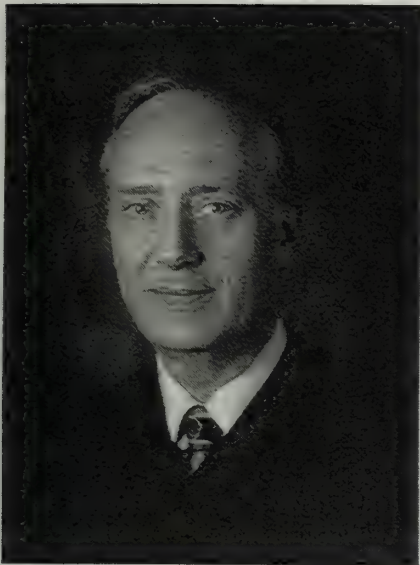
describe the advantages and disadvantages of merging offices. It sets out certain factors, including where there are and aren't savings, that a local court should consider before making any decision. We've tried to proceed very cautiously, respecting the principle that ultimately the decision must be made locally by each court. The Judicial Conference will consider our recommendation at its September meeting.

As a side product of the study, we learned that many courts already are working with both probation and pretrial services, and sometimes even with the clerk's office, to share certain functions without merging offices. This trend seems particularly evident in the area of automation.

As the next step in our long-range planning we're working on a report that will describe these various efforts for the benefit of the courts. In this way, a chief judge in his or her court can say, "Well, I like that. I think we'll try that." Or, "This idea wouldn't work for us, but this one might." We found that you have to recognize the wide variety of courts, the differences in numbers of personnel, in geography, and so forth.

Q: Does the Criminal Law Committee work directly with the U.S. Sentencing Commission or have any input into its recommendations?

A: Our guideline subcommittee is our liaison to the U.S. Sentencing Commission. We sometimes propose guideline changes or new guidelines, and sometimes we react to their proposals. Every year we propose an agenda to the commission, covering things we'd like to see them do. Right now, for example, we're urging them to resolve as many circuit splits as possible. Circuit splits are where different circuits have announced conflicting interpretations of what certain guidelines mean. We feel that the commission is the pri-



Chief Judge George P. Kazen

mary institution to resolve these splits, especially if we're supposed to have a guideline system that promotes uniformity.

Also, we've been doing a lot of work with the commission on the guidelines on fraud and loss in the white-collar crime area.

A longer range project is working with the commission on the "role in offense" adjustments for aggravating and mitigating roles, and also for acceptance of responsibility.

We're also trying to stay in touch with the commission concerning its own long-range project for simplification of the guidelines. Of course, the commission, like the courts, has vacancy problems. They now have three vacancies on the commission, out of a total of seven, which means it takes a unanimous vote by the remaining four to do anything. I understand that by the end of the first session of the 105th Congress, the terms of three of those remaining four commissioners will expire.

We also worked with the commission and the Federal Judicial Center to sponsor the 1997 National Sentencing Institute held in Fort Worth, Texas, which was very well received. We hope to do it again next year.

Q: Your committee considers the crime legislation that is proposed in Congress. What issues or topics are coming to the forefront in this area?

A: Our third subcommittee deals with criminal legislation, which is becoming a large part of our agenda for the simple reason that Congress is constantly proposing new criminal statutes. The two big areas we're monitoring right now are the victims' rights proposals and also the various proposals to significantly increase the prosecution of juveniles in federal court.

Judge Maryanne Trump Barry (D. N.J.), my predecessor on the Criminal Law Committee, and I have written to Congress asking it to proceed cautiously in the area of juvenile crime. Although the Conference has not taken an official stand on ju-


Q: You recently testified whether the Judicial Conference favored a statutory or constitutional amendment approach to victims' rights. What are the Judiciary's primary concerns with this legislation?

A: One problem is that we're dealing with a moving target. There have been several proposed versions of a constitutional amendment, with different implementing statutes. There are serious questions of who is a "victim," and to which crimes these proposals will apply. We also are concerned about whether the Judiciary will be assigned a potentially costly notice burden without having the necessary resources to do the job. There also are serious federalism concerns, since a federal constitutional provision would apply to state criminal courts. There also is the concern

"We cannot tell Congress what to do, but we feel obliged to at least share our concerns about how legislation impacts the Judiciary."

venile crime, it has a long-standing policy of urging Congress to go slow on the federalization of crime in areas traditionally left to state courts. We realize that there are probably some instances, such as interstate gangs involved in racketeering, drugs, and weapons, where the federal courts could play an important role, but we think that federal courts should not be the juvenile court of first resort.

There are no federal juvenile facilities. Our pretrial services and probation officers are not trained to deal with 13- and 14-year old offenders, who will have needs different from adult offenders. We cannot tell Congress what to do, but we feel obliged to at least share our concerns about how legislation impacts the Judiciary.

about whether, and to what extent, the victims' wishes will conflict with decisions made by the public prosecutor, as well as the impact on the right of an accused person to a fair trial. We have tried to share these concerns with Congress so that whatever finally is enacted will be as manageable as possible, considering that all courts—state and federal—are handling ever-increasing numbers of criminal cases without a corresponding increase in resources. In that regard, the Judicial Conference has gone on record for the principle that, if Congress concludes there is a justifiable need in this area, it should enact a statute rather than propose a constitutional amendment. 

Organization of the Supreme Courts of the Americas



On May 16, the Interoceanic Regional Authority, which administers buildings and other assets associated with the Panama Canal that have reverted to the government of Panama, transferred to the Organization of the Supreme Courts of the Americas (OSCA) a building to be used for the Organization's Secretariat. Eighteen of the Supreme Courts of the western hemisphere have joined the organization. It was created at a 1995 conference in Washington and will hold its next plenary session in Panama, the initial site of the Secretariat. Left to right: Dr. Nicolas Arditto Barletta, president of the Interoceanic Regional Authority; Panamanian Chief Justice Arturo Hoyos, president pro tempore of OSCA; and Chief Judge Juan Torruella (1st Cir.), a member of the Judicial Conference Committee on International Judicial Relations, who represented Chief Justice William H. Rehnquist at the plenary session planning meeting.

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THE THIRD BRANCH

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**Retired Associate Justice
William J. Brennan Jr.
1906-1997**

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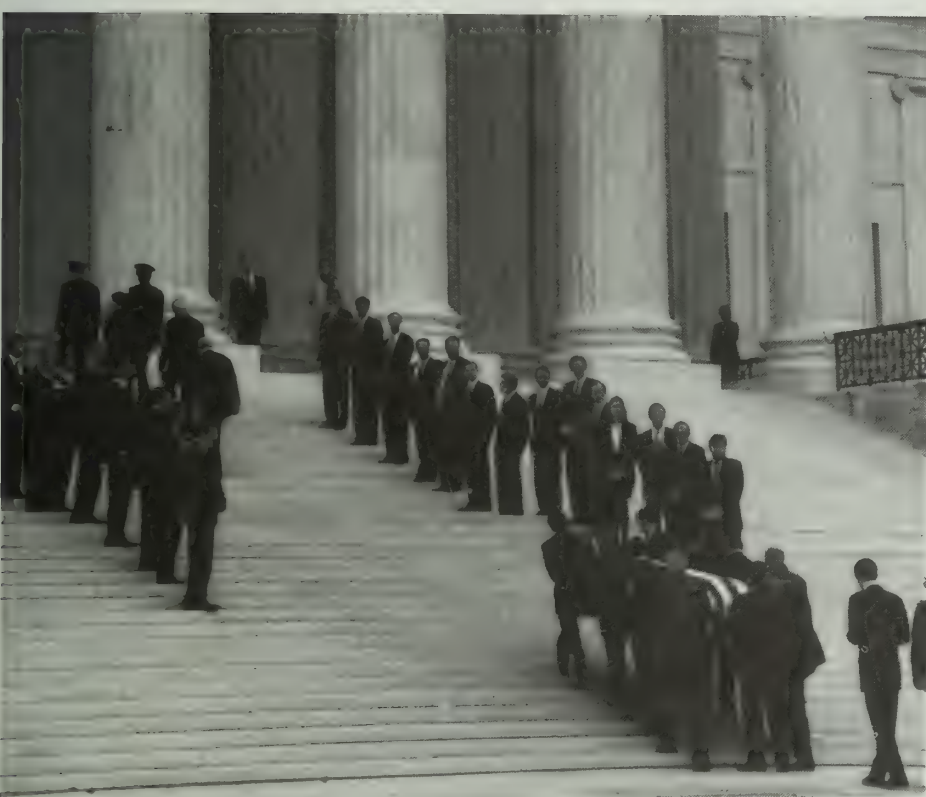
Appropriations Bills Pass Senate, Await House Action

As Congress adjourned for its August recess, it left behind an unusual scenario—the Senate has completed more action on its appropriations bills for the Judiciary than has the House. The Commerce, Justice, State, and Judiciary bill and the Treasury, General Government bill have passed the Senate, but still await House floor action.

The Senate's Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Bill of 1998, S. 1022, made its way to the Senate floor for consideration in the last week before Congress took its August break and was passed on a 99-0 vote. The Judiciary had requested total obligational authority of \$3.84 billion for fiscal year 1998, a 10.1 percent increase over the FY97 estimated obligation level.

The Judiciary's budget request would allow the courts to operate at the same level as in FY97, and provides increases to meet new workload requirements and support critical Judiciary pro-

See Appropriations on page 2



Flanked by 27 former law clerks, the body of Retired Justice William J. Brennan Jr. was brought to lie in repose in the Great Hall of the Supreme Court. Chief Judge Richard Arnold (8th Cir.), also a former law clerk for Brennan, led the pallbearers, followed by members of the Brennan family.

Justice Brennan was nominated to the Supreme Court by President Eisenhower in 1957 and served on the court until 1990 when he retired. He was awarded the Medal of Freedom, the nation's highest civilian honor, in 1994. (See photo story on page 5.)

INSIDE

Judicial Compensation Action on Hold	pg. 4
ABA Issues Report on Judicial Independence	pg. 6
Congress Acts on Judgeships	pg. 7

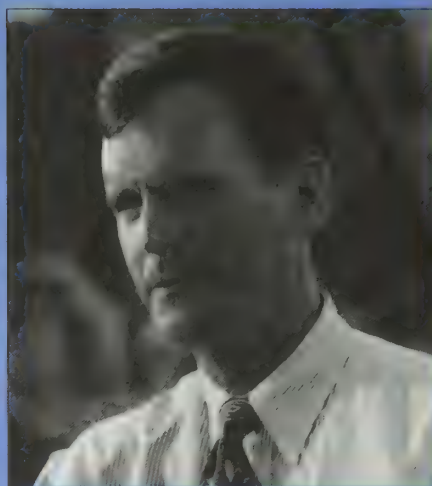
Appropriations continued from page 1

grams. The Senate approved \$3.83 billion in obligations for the Judiciary, a 9.7 percent increase over the FY97 level. Salaries and Expenses would receive a 9.4 percent increase in obligations; Defender Services, a 9.8 percent increase; Fees of Jurors, a 5.8 percent increase; Court Security, an 18.7 percent increase; and the Administrative Office, a 3.9 percent increase. The Sentencing Commission would receive approximately a 7.8 percent increase and the Federal Judicial Center would be funded at approximately last year's level. In contrast, the Department of Justice received only a 5.2 percent increase.

H.R. 2267, the bill reported out of the House Appropriations Committee, provides \$3.81 billion for the Judiciary, a 9.3 percent increase over last year's obligations. Salaries and Expenses would receive a 9.5 percent increase in obligations; Defender Services would receive a 5.7 percent increase; Fees of Jurors would receive a 5.8 percent increase; Court Security would receive an 18.7 percent increase; and the Administrative Office would receive a 3.9 percent increase. The Sentencing Commission would receive a 2.5 percent increase and the Federal Judicial Center would be funded at approximately the same level as last year.

Special Provisions

The Senate bill contains several provisions of special interest to the Judiciary. In the defender services area, the bill takes three actions. It (1) calls for disclosure of federal defender attorney vouchers to the public upon approval of payment, except in certain circumstances; (2) mandates that the prosecution and the Judiciary split Criminal Justice Act costs in excess of \$63,000 per year for each capital case, and (3) requires a report on the cost of defending and presiding over federal capital cases, due July 1, 1998. The bill also splits the Ninth Circuit into



Senator Judd Gregg (R-NH)

The following is the text of a resolution honoring Senator Judd Gregg (R-NH):

"The Committee on the Judicial Branch of the Judicial Conference of the United States, with

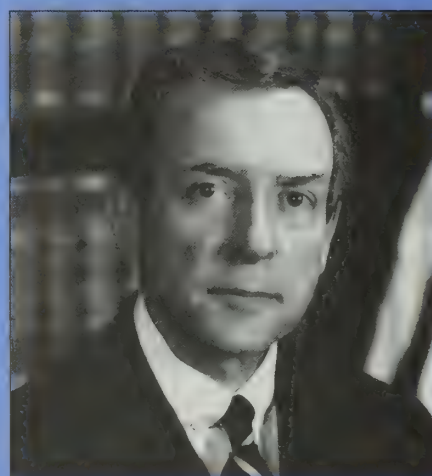
two circuits with California and Nevada together in a new Ninth Circuit, and the remaining states and territories in a new Twelfth Circuit. (The House already has passed a bill to establish a commission to study structural alternatives for the federal courts of appeals.) In addition, the

great appreciation and respect, acknowledges the leadership that Senate Appropriations Subcommittee Chairman Judd Gregg demonstrated in providing for the waiver of section 140 of Public Law No. 97-92 and a 1998 cost-of-living adjustment for the justices and judges of the United States in S. 1022, the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998.

Chairman Gregg's positive action demonstrated his deep commitment to his country's future and the continued health and strength of the federal Judiciary. This example of doing what is in the best interest of our government favorably impacts on the morale of the federal Judiciary.

Wherefore, the Judicial Branch Committee takes this occasion to express its deepest respect and appreciation for the dedicated service of Chairman Gregg."

bill requires payment by the Judiciary of special masters appointed before enactment of the Prison Litigation Reform Act for their work hereafter. The provision included in the bill by Senator Judd Gregg (R-NH) to provide a cost-of-living adjustment (COLA) for judges in



Senator Orrin G. Hatch (R-UT)

The following is the text of a resolution honoring Senator Orrin G. Hatch (R-UT):

"The Committee on the Judicial Branch of the Judicial Conference of the United States, with great appreciation and respect acknowl-

edges the courage and leadership which Senate Judiciary Committee Chairman Orrin Hatch demonstrated on July 17, 1997, in securing an amendment to S. 1023, the Treasury, Postal Service, and General Government Appropriations Act of 1998, to provide for the repeal of section 140 of Public Law No. 97-92, as well as the decoupling of congressional, judicial, and Executive Schedule compensation.

Chairman Hatch's positive action demonstrated his deep commitment to this country's future and the continued health and strength of the Federal Judiciary. This example of doing what is in the best interest of our Government is an inspiring one which federal judges shall not forget.

Wherefore, the Judicial Branch Committee takes this occasion to express its deepest respect and appreciation for the dedicated service of Chairman Hatch."

FY98 has been retained. This provision constitutes the affirmative action of Congress as required by section 140 of P.L. 97-92. (Section 140 denies automatic annual COLAs to judges unless such affirmative action is taken.)

The bill as reported out of the House Appropriations Committee does not include a judges' COLA. The report accompanying the bill calls for several reports from the Judiciary: (1) an update of the report on Optimal Utilization of Judicial Resources provided earlier this year; (2) a comprehensive statistical analysis of the factors causing cost increases in defender services representations, recommendations

on controlling the costs, and an explanation of the disparity in average costs of capital habeas representations between circuits and districts; and (3) an explanation of the discrepancy between the number of court security officers that funds were appropriated for and the number hired.

FY 98 Treasury, General Government Appropriations Bill

S. 1023, the Senate Treasury, General Government bill also passed the Senate by a 99-0 vote. This bill normally contains funding for construction of federal courthouses. However, S. 1023 includes a one-year

moratorium on new General Services Administration (GSA) construction, including courthouses, reportedly due to errors by GSA in rent calculations that have left the Federal Buildings Fund short of money. Courthouses have been financed largely from appropriations, not from Federal Buildings Fund revenues, for the past several years. Building projects currently on-going will continue to be funded.

Although the Senate bill denies members of Congress a COLA, it allows judges to receive a COLA, thanks to an amendment offered by Senator Orrin Hatch (R-UT), who was

Appropriations continued on page 4


FY 1998 Judiciary Funding Summary

	FY 1997 Estimated Obligations	FY 1998 Request	House Bill	Senate Passed Bill
Supreme Court				
Salaries and Expenses	\$27,157	\$29,278	\$29,278	\$28,903
Care of Building and Grounds	3,320	4,047	3,450	6,220
TOTAL	30,477	33,325	32,728	35,123
Court of Appeals for the Federal Circuit	15,013	16,156	15,507	15,796
U.S. Court of International Trade	11,189	11,503	11,503	11,503
Court of Appeals, District Courts, and Other Judicial Services				
Salaries and Expenses	2,775,148	3,049,067	3,038,257	3,037,181
Defender Services	335,409	368,397	354,482	368,397
Fees of Jurors	66,400	70,252	70,252	70,252
Court Security	141,462	167,883	167,883	167,883
Administrative Office of the U.S. Courts	85,513	90,712	88,869	88,857
Federal Judicial Center	18,124	18,664	17,734	17,654
Judicial Retirement Fund	30,200	34,200	34,200	34,200
U.S. Sentencing Commission	9,045	9,751	9,271	9,751
TOTAL GROSS OBLIGATIONS	3,517,980	3,869,910	3,840,686	3,856,597
Less Reimbursable Obligations	-28,646	-28,077	-28,077	-28,077
TOTAL NET OBLIGATIONS*	\$3,489,334	\$3,841,833	\$3,812,609	\$3,828,520

**Note: The Judiciary has changed the basis of its budget request from appropriations to obligations. Obligation levels provide a more realistic portrayal of planned spending levels because they include not only appropriations but new fee collections, fee and appropriated fund carryover, the Judiciary Information Technology Fund, transfers, and reimbursements.*

urged to do so by Administrative Office Director Leonidas Ralph Mecham. The amendment delinks COLAs for members of Congress from those of judges and repeals section 140 of P.L. 97-92, making judges eligible to receive automatic, annual COLAs without action by Congress. The Hatch amendment was co-sponsored by Senators Patrick J. Leahy (D-VT),

Herb Kohl (D-WI), and Richard J. Durbin (D-IL).

The House bill as reported out of committee is silent regarding the issue of pay for judges and members of Congress, which has the effect of providing a COLA to members but not judges. (A waiver of Section 140 of P.L. 97-92 would still be required to give judges a COLA.) The House bill also contains a moratorium on new construction funding for FY98. 

usually every year. The House version of this appropriations bill was reported out of committee without mention of judges' COLAs. It will be up to conferees on the bill to determine whether or not the Hatch amendment remains.

H.R. 875 and S. 394

H.R. 875 and S. 394 were introduced by the chairs and ranking minority members of the Senate and House Judiciary Committees. The bills would give judges a catch-up pay adjustment of 9.6 percent; delink judges' pay from congressional and Executive Schedule compensation and link judges' salary adjustments to annual changes in the rates of pay of the General Schedule; and repeal Section 140 of P.L. 97-92. As of August 1, 1997, H.R. 875 had 76 co-sponsors and S. 394 had 25 co-sponsors. There has been no action

Judicial Compensation Action On Hold

As Congress adjourned for its August recess, the prospect for an adjustment to judges' compensation remained uncertain. Several bills contain provisions on judicial pay adjustments, and these bills made progress while continuing to attract bi-partisan support. Final resolution of the pay adjustment question, however, must wait for Congress to return in September. "Judge Barefoot Sanders, chairman of the Committee on the Judicial Branch, and I have joined judges and Administrative Office staff in contacting key members of Congress to inform them of how important this legislation is not only to judges, but also to the welfare of the federal court system," said Leonidas Ralph Mecham, AO Director. "I'm sure this crucial message will continue to be communicated during the congressional recess." Leaders and members of the Federal Judges Association, the Federal Magistrate Judges Association, and the National Conference of Bankruptcy Judges also are actively involved.

S. 1022 and H.R. 2267

S. 1022, the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Bill of 1998 includes a provision offered by Senator Judd

Gregg (R-NH) that would give judges a cost-of-living adjustment (COLA), the affirmative action required by section 140 of P.L. 97-92. The House version of this appropriations bill, H.R. 2267, does not include this provision, and it is not antici-

Several bills contain provisions on judicial pay adjustments, and these bills made progress while continuing to attract bi-partisan support. Final resolution of the pay adjustment question, however, must wait for Congress to return in September.


pated such a provision will be added when the bill reaches the House floor. Whether or not the COLA remains in the final bill will be decided when the House and Senate meet in conference on the bill.

S. 1023

S. 1023, the Treasury, General Government, and Civil Service Appropriations bill, also passed in the Senate. Senator Orrin Hatch (R-UT) made an amendment to this bill that would repeal section 140 and delink judges' and members' pay. If enacted, judges would be eligible for automatic, annual COLAs whenever Executive Branch General Schedule employees receive a COLA, which is

on H.R. 875 or S. 394 since they were referred to subcommittees in March.

H.R. 1252

H.R. 1252 is the Judicial Reform Act, introduced by Representative Henry J. Hyde (R-IL), chair of the House Judiciary Committee. Representatives of the Judicial Conference testified at hearings on this bill and voiced opposition to several provisions (See June 1997 TTB) affecting the Judiciary. In the subsequent subcommittee markup, two elements from H.R. 875 were added that would repeal section 140 of P.L. 97-92 and delink judicial and congressional pay adjustments. The bill was sent to the full committee for consideration. 

Judiciary Mourns Passing of Justice Brennan



Associate Justice William J. Brennan, Jr.

"Today we recall his decency and grace which made out of his philosophical foes some close, personal friends. We recall his humor and humility, we recall his pride in his own heritage and the stunning, almost inexplicable empathy that enabled him to walk in the shoes of those whose lives were so very different from his own. We recall him as a legal giant, the balance wheel who molded the Supreme Court into an instrument of liberty and equality during tumultuous times. For Justice Brennan, the phrases of our Constitution were not archaic abstractions, but living, vibrant guarantees of the freedom and equality God has given us."

**Remarks by President Clinton
at the funeral of Justice
Brennan, St. Matthew's
Cathedral, Washington, D.C.**



Attendants prepare the flag-draped casket prior to public viewing. Two law clerks and two police officers stood vigil while Justice Brennan's casket remained on view in the Great Hall.

"Justice Brennan served as a member of the Supreme Court for more than a third of a century. During that time he played a major role in shaping American constitutional law. He was also a warm-hearted colleague to those of us who served with him."

Chief Justice William H. Rehnquist



A portrait of Justice Brennan was displayed in the Great Hall during the viewing period.

"The blend of wisdom, humor, love and learning that Justice Brennan shared with his colleagues—indeed with all those privileged to know him—was truly unique. He was a great man and a warm friend."

Associate Justice John Paul Stevens

"Justice Brennan's death means the passing of an era in the history of the Supreme Court. In addition to the remarkable legal legacy he left behind, he left a legacy of friendship and goodwill wherever he went."

Associate Justice Sandra Day O'Connor

"William Brennan was a warm, loyal, and engaging friend of every member and senior member of this Court, a Court which he loved, honored, and enhanced. He was far more than this, however, Justice Brennan was one of the great friends of freedom, freedom for those who have and freedom for those who yet must seek it."

Associate Justice Anthony M. Kennedy

ABA Commission Issues Report on Judicial Independence

"The constitutional protections for judicial independence should be cherished, not challenged," said a report issued earlier this month by the American Bar Association's Commission on Separation of Powers and Judicial Independence. The ABA formed the commission a year ago to assess whether judicial independence is threatened by criticism from the political branches.

The commission made its recommendations following extensive fact-finding, including a series of public hearings, interviews with members of Congress who chair committees or subcommittees with jurisdiction over the courts, a survey of state and local bar presidents and executive directors, and correspondence with federal and state judges, bar leaders, and academicians.

The commission's report cited "the increasingly strident political criticism of particular judicial decisions and activities" as the impetus for the examination. While the commission found that there is nothing new about judicial criticism, it noted that a shift in the interbranch relationship has occurred in which Congress has taken an increasing interest in the internal management and operational efficiencies of the Judiciary and "an unfortunate shrillness has often marked the tenor of inter-branch discussions. This new skepticism has caused some to fear that Congress is seeking to over-regulate the courts in ways that are not in keeping with a truly independent Judiciary." Said commission chair Edward W. Madiera, Jr., "Judicial independence is not for the protection of judges, but for the protection of the public."

The commission concluded that judicial accountability is an "indis-

pensable counterbalance to judicial independence, and the present mechanisms to promote accountability are essentially sound." Also, before any proposals are considered for additional legislation or constitutional amendments in the area of judicial discipline and removal, hearings should be held on the 1993 Report of the National Commission on Judicial Discipline and Removal.

Among the recommendations made by the ABA's commission are the following:

- Disagreement with a particular decision of a federal judge is not a proper basis for initiating impeachment proceedings. Public officials should refrain from threatening to initiate impeachment proceedings on the basis of perceived interpretation or misinterpretation of the law in particular decisions.
- Judges threatened with impeachment proceedings on account of unpopular rulings should not be deterred from exercising their independent judgment and rendering decisions according to law.
- State and local bar associations should develop effective mechanisms for evaluating and, when appropriate, promptly responding to misleading criticism of federal judges and judicial decisions in each federal judicial district.
- Judicial vacancies should be filled without delay.
- Congress should promptly consider establishing a permanent National Commission on the Federal Courts, to be comprised of representatives from all three branches of government, as well as representatives of litigants and other groups with an interest in the federal courts. The Commission would develop, on an ongoing basis, recommendations for Congress concerning court practice, procedure, administration, and the like, and evaluate legislative proposals affecting the courts.
- Federal judges should be encouraged to meet informally with their congressional representatives on a periodic basis, for the purpose of improving interbranch communication and understanding.
- Legislation should be enacted to exclude budgetary items involving the federal Judiciary's appropriations from the presidential line-item veto.
- Congress is urged to resist efforts to intrude into the remedial processes of the federal courts for the purposes of restricting the ability of litigants to obtain their constitutional rights and of preventing the federal courts from fairly adjudicating constitutional claims.
- Congress should delink proposals to increase congressional pay from proposals to increase judicial pay and make judicial salaries subject to periodic and automatic cost-of-living adjustments.
- The ABA in conjunction with state and local bars, should take appropriate steps to inform the bar and the public of the procedures for handling complaints against and disciplining federal judicial officers under the Judicial Conduct and Disability Act of 1980.

AUGUST

13-15 Wednesday-Friday
Executive Committee

18-19 Monday-Tuesday
Ninth Circuit Conference

25-26 Monday-Tuesday
Seminar for Bankruptcy Appellate Panel Judges

SEPTEMBER

3-5 Wednesday-Friday
Workshop for District Judges III

4-5 Thursday-Friday
Advisory Committee on Civil Rules

9-10 Tuesday-Wednesday
Workshop for Chief Bankruptcy Judges

11-12 Thursday-Friday
Advisory Committee on Bankruptcy Rules

23-24 Tuesday-Wednesday
Judicial Conference of the U.S.

24 Wednesday
Committee on the Judicial Branch

28-30 Sunday-Tuesday
Seventh Circuit Conference

29-30 Monday-Tuesday
Advisory Committee on Appellate Rules

29-Oct. 1 Monday-Wednesday
First Circuit Conference

VACANCY ANNOUNCEMENTS THE THIRD BRANCH

Vol. 29 Number 8 August 1997

AUTOMATION SYSTEMS MANAGER, U.S. Bankruptcy Court, District of Vermont

The U.S. Bankruptcy Court in Rutland, Vermont, is seeking a talented individual to manage and further develop its information systems. Candidates must have experience with Unix and Windows operating systems, Novell 3x-4, Internet development, and possess the ability to develop new applications for this automation-progressive court and provide hands-on software and hardware support. Salary: \$42,766-\$69,492, based on experience. The position announcement is available on the Internet at <http://www.usbvt.court.fed.us> or by calling 802-747-7625.

HUMAN RESOURCE SPECIALIST, Middle District of Florida

The U. S. Probation Department seeks human resources professional to provide full range of human resources management services, including budget, recruitment, benefits coordination, and planning and development of human resources policies and procedures. Extensive knowledge of human resource management and excellent communications skills required. Bachelors degree preferred. Salary: \$30,000-plus, commensurate with qualifications assessment. Call for application (813) 228-2901, ext. 195.

CLERK OF COURT, District of Maine

The U.S. Bankruptcy Court is seeking applicants for the position of Clerk of Court to direct all aspects of court administration including case management, budget, finances, automation, facilities, personnel, and liaison outside the court. The office is in Portland. Travel is required to the office in Bangor. Position requires 10 years administrative experience with a minimum of three years in a position of substantial management responsibility. Legal training/experience desirable but not essential. An active practicing attorney may substitute active practice on a year-for-year basis. Salary range \$87,146-\$113,294. Original resume and two copies marked "Personal and Confidential" must be received by c.o.b. **September 15**, by Samuel A. Wilkinson, Clerk, U.S. Bankruptcy Court, 537 Congress Street, Portland, ME 04101.

CHIEF PROBATION OFFICER, Western District of Arkansas

The position is located in Fort Smith, Arkansas. The Western District of Arkansas serves 34 counties with three U.S. district judges and two full-time magistrate judges. The Probation Office has 14 authorized probation officers and 9 administrative/clerical support staff. The incumbent is responsible to the district court, the Judicial Conference of the United States, the Administrative Office of the United States Courts, and the United States Parole Commission for probation and parole programs in the judicial district. Grade: JSP 15-16. To apply send a letter of application and resume to Chief U.S. District Judge Jimm Hendren, P. O. Box 1586, Fort Smith, Arkansas 72902 by **October 15, 1997**. The person selected may be required to undergo a full background investigation conducted by the Federal Bureau of Investigation.

EQUAL OPPORTUNITY EMPLOYERS

On Verge of Recess, Congress Acts on Judgeships

In a flurry of activity before Congress' August recess, a temporary judgeship bill was introduced in the Senate, the bankruptcy judgeship bill passed the House, and the Senate confirmed three judges and received 14 new nominees.


The House passed H.R. 1596, the Bankruptcy Judgeship Act of 1997. The bill authorizes a total of 18 new bankruptcy judgeships, seven new permanent bankruptcy judgeships, and 11 temporary judgeships. In June, Judicial Conference representatives, appearing before the House Judiciary Subcommittee on Commercial and Administrative Law, urged Congress to create the judgeships to meet the burgeoning caseload in bankruptcy courts. New bankruptcy judgeships were last created in 1992. Since then, bankruptcy petitions filed in one year have exceeded one million. The 18 new judgeships would be located in 14 different judicial districts. Eleven of the positions would be created as temporary judgeships to exist for a minimum of five years. Currently, there is no companion bill in the Senate.

In the Senate, S. 1113 was introduced by Senator Charles E. Grassley (R-IA) with co-sponsors Senators Orrin G. Hatch (R-UT), John W. Warner (R-VA), Mike DeWine (R-OH), Richard J. Durbin (R-IL), and Charles Hagel (R-NE). The bill would extend certain temporary district court judgeships. The 1990 judgeship bill, P.L. 101-650, fixed expiration dates for certain judgeships, and these judgeships will be lost without this new legislation. The House already has introduced a similar bill, H.R. 977. In introducing the Senate bill, Grassley said, "As I have noted, I have studied various Judiciary issues and have worked with the Judiciary to address some of these issues. From my studies and from conversations

I've had with those on the bench, it is obvious that there is no judicial crisis looming on the horizon. However, changing circumstances in some judicial districts do need to be addressed. That is why I am proposing this bill. It addresses the needs of some of these districts in a substantive, rational manner."

Prior to its August recess, the Senate also confirmed three judicial nominees, bringing the total number of confirmations in the first session of the 105th Congress to nine, with three in the courts of appeals and six in the district courts. Meanwhile, the White House sent 14 more judicial

nominations to Congress; all but one were to fill vacancies in the district courts. The lone court of appeals nomination would fill one of nine vacancies on the Ninth Circuit.

Judiciary-wide, there are 52 nominations pending, while judicial vacancies, as of August 1, 1997, totaled 101. The average Article III vacancy has existed for 528 days. The oldest vacancies, however, are in the 4th Circuit, the Northern District of Texas and the Southern District of Texas. These vacancies date from P.L. 101-650, which was signed on December 1, 1990. The three vacancies have existed for 2,433 days. 

Justice O'Connor Receives ABA Medal




Associate Justice Sandra Day O'Connor

Press Images/David Burnett

spirit. She leads the profession with a deep commitment to promoting professionalism, civility, and the rule of law. She is an outstanding ambassador for jurisprudence to the rest of the world."

Scholars particularly point to her contributions to legal theory in areas of federalism, privacy, gender discrimination, and separation of church and state, and to her approach to legal analysis, looking not only at precedent and policy on a grand scale but also to justice for the litigants at hand.

The ABA Medal was created in 1929 and has been presented only when the ABA's Board of Governors determined that an individual has rendered exceptionally distinguished service to the cause of American jurisprudence. Past medal recipients include Oliver Wendell Holmes, Charles Evans Hughes, Felix Frankfurter, Whitney North Seymour, Leon Jaworski, Lewis Powell, Thurgood Marshall, and other distinguished judges and lawyers. 

Deceased: Retired Associate Justice William J. Brennan, Jr., Supreme Court of the United States, July 24.

Appointed: Dale A. Drozd, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of California, July 15.

Appointed: Karen L. Hayes, as U.S. Magistrate Judge, U.S. District Court for the Western District of Louisiana, June 25.

Appointed: Donald M. Middlebrooks, as U.S. District Judge, U.S. District Court for the Southern District of Florida, July 15.

Appointed: Jeffrey T. Miller, as U.S. District Judge, U.S. District Court for the Southern District of California, June 6.

Appointed: Patricia C. Williams, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Washington, July 13.

Appointed: George A. Yanthis, as U.S. Magistrate Judge, U.S. District Court for the Southern District of New York, June 27.

Elevated: Judge Norma Holloway Johnson, to Chief Judge, U.S. District Court for the District of Columbia, succeeding Chief Judge John G. Penn, July 22.

Elevated: Bankruptcy Judge Dana L. Rasure, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Oklahoma, June 3.

Elevated: Judge C. Roger Vinson, to Chief Judge, U.S. District Court for the Northern District of Florida, succeeding Chief Judge Maurice M. Paul, August 1.

Elevated: Judge Ralph K. Winter, Jr., to Chief Judge, U.S. Court of Appeals for the Second Circuit, succeeding Chief Judge Jon O. Newman, July 1.

Senior Status: Judge Marvin Katz, U.S. District Court for the Eastern District of Pennsylvania, August 26.

Senior Status: Chief Judge Jon O. Newman, U.S. Court of Appeals for the Second Circuit, July 1.

Senior Status: Maurice Mitchell Paul, U.S. District Court for the Northern District of Florida, July 31.

Resigned: Magistrate Judge Cynthia D. Kinser, U.S. District Court for the Western District of Virginia, June 30.

Retired: Bankruptcy Judge John M. Klobucher, U.S. Bankruptcy Court for the Eastern District of Washington, July 12.

Deceased: Senior Judge Norman W. Black, U.S. District Court for the Southern District of Texas, July 23, 1997.

Deceased: Senior Judge Marion J. Callister, U.S. District Court for the District of Idaho, June 24.

Deceased: Senior Judge Clarkson S. Fisher, U.S. District Court for the District of New Jersey, July 27.

Deceased: Senior Judge Frank A. Kaufman, U.S. District Court for the District of Maryland, July 31.

Deceased: Bankruptcy Judge Clarence E. Luckey, U.S. Bankruptcy Court for the District of Oregon, July 12.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of August 1, 1997

Courts of Appeals

Vacancies	25
Nominees	12

District Courts

Vacancies	74
Nominees	40

Court of International Trade

Vacancies	2
Nominees	0

Courts with "Judicial Emergencies"

31

U.S. Conference of Mayors, Bar Presidents Support Judiciary

Last month, several organizations weighed in with support for judicial pay adjustments, filling judicial vacancies, and judicial independence.

Representatives of seven national legal organizations wrote to President Clinton and Senate Majority Leader Trent Lott about a "looming crisis in the Nation brought on by the extraordinary number of vacant federal judicial positions." Clinton and Lott were asked to expedite the selection and confirmation process for federal judicial nominees. "We respectfully urge all participants in the process to move quickly to resolve the issues that have resulted in these numerous and long-standing vacancies in order to preserve the integrity of our justice system," the letter said. It was signed by the presidents of the American Bar Association, the Association of Trial Lawyers of America, the National Bar Association, the National Association of Women Lawyers, the Hispanic National Bar Association, the National Conference of Women's Bar Associations, and the National Asian Pacific American Bar Association.

Meanwhile, mayors of 320 cities at the 65th annual meeting of the U.S. Conference of Mayors passed resolutions supporting judicial pay adjustments and judicial independence.

Noting that federal judges have not received a pay increase or adjustment since 1993, a Conference of Mayors resolution supports legislation that will adjust, and provide a procedure for the future adjustment of, the salaries of federal judges and urges its speedy adoption. "Adequate compensation for federal judges," the resolution reads, "helps to

insure that our Judiciary is reflective of the whole of our society."

Another resolution recognizes the need to preserve judicial independence, and called upon the Senate and, in particular, the Senate Judiciary Committee to handle judicial confirmation proceedings in an objective and expeditious manner. "It appears that certain members of Congress who disagree with the judicial decisions rendered by various federal judges," the resolution read, "are threatening to use the congressional impeachment power to remove those judges from the bench." Such threats "chill the independence of the Judiciary and violate the separation of powers

doctrine contained in the United States Constitution." The resolution further characterized these threats as an attempt to "undermine the separation of powers doctrine contained in the United State Constitution by subordinating objective and rational legal decision making to popular political whims." The resolution also said that refusal by certain members of the Senate to act on judicial nominations "is based on concerns regarding the nominees' political ideology rather than concerns regarding the nominees' legal qualifications or ability to perform the duties of the office to which they were appointed."

Court Sites Receive Video Update From Washington



Over 1,000 judges and court staff in ninety cities gathered in commercial and educational sites to view "U.S. Supreme Court Update: A Review of the 1996 Term," a videoseminar broadcast by the Federal Judicial Center on July 17 from its studio in the Thurgood Marshall Federal Judiciary Building. Panels of legal experts analyzed 56 of the Court's decisions. Videotapes are available to federal court personnel from the FJC's Information Services. The Administrative Office and the U.S. Sentencing Commission, along with the FJC, are implementing a Judiciary-wide television network to broadcast educational and informational programming to the federal courts. The AO will install satellite downlink antennas at as many as 200 courts by the end of 1997.

Independent Judiciary Is Key Issue For AJS

Sandra Ratcliff Daffron is the executive vice president and director of the American Judicature Society. She headed the AJS's department of programs from 1988 to 1993 and was an educator and evaluator for American Bar Association activities from 1993 to 1997.

Q: What is the role of the American Judicature Society?

A: Founded in 1913, the American Judicature Society is an independent, non-partisan, not-for-profit national organization that promotes improvements in the justice system for the benefit of all Americans.

AJS has several missions that relate to almost all facets of the Judiciary. One of its oldest is to minimize the role of politics in state judicial selection by promoting merit-based systems for choosing judges. This includes the use of performance evaluation commissions that make recommendations for appointment and retention.

The organization also champions improvements in the operation of the courts and the promotion of the importance of the jury system in our democracy through reforms and programs that educate the public on the merits of jury service.

Also of importance to the Society is an independent federal and state Judiciary that can carry out its constitutional responsibility free from political pressure of congressional and executive branch politics.

AJS carries out its mission by conducting and disseminating empirical research in support of



Sandra Ratcliff Daffron

reforms; by responding to hundreds of queries from policymakers, journalists, and others on issues related to the courts; and by producing curricula and training materials for judges and court staff on a range of issues, including ethical conduct and professional responsibilities.

Q: As you know, both Houses of Congress have held hearings on judicial activism and judges legislating from the bench. There has even been talk of impeaching judges. As a leader in promoting judicial ethics, how does AJS view this controversy?

A: We believe that this recent round of criticism is unfair to all judges while on the bench. If a law violates the Constitution, all judges should be inclined to strike it down, regardless of whether the ruling will be construed as making or shaping policy. As for criticism for striking down voter referenda, many of those initiatives are written and passed even though

they won't pass constitutional muster.

AJS believes that although no judge has the right to legislate or rewrite the Constitution, it is the duty of the Judiciary to interpret the meaning of any law, including the Constitution.

Over the years, politicians have labeled judges activist when they disagree with their rulings. What is happening now, however, is a campaign aimed at discrediting or intimidating individual judges. Although Congress has a legitimate process, it is not in the public's interest to conduct investigations of judges simply because their rulings are incompatible with the prevailing ideology or simply because the judges may belong to either the Democratic or Republican Party. This type of activity damages the independence of the Judiciary by subjecting it to subtle, though persistent, political pressures.

Q: AJS recently established a new Center for Judicial Independence. Was it in response to this controversy?

A: Throughout its 84 years, AJS has promoted the principle of judicial independence and a Judiciary that is free to issue fair and just rulings without bowing to popular or political pressures.

Recently AJS has been inundated with requests for help with judicial independence issues. Through the leadership of recent AJS president Robert Kaufman, Lawrence Okinaga, the new president, and our executive committee, the Center was founded to address the surge in

interest resulting from recent efforts to remove judges from the bench because they have issued unpopular rulings.

Another reason for the creation of the Center has been campaigns to convince voters of the need for term limits on judges.

The primary goal of the Center for Judicial Independence is not to defend individual judges per se, but to promote and safeguard the principle of judicial independence. To that end, our goal is to educate the media, elected officials, and the general public about the importance in a democratic society of a Judiciary that is independent of popular and political pressures. AJS plans to educate the public about the need to offset the misinformation campaign with solid facts and arguments. We hope to develop a public constituency for the Judiciary so that the needs of judges can be more effectively communicated to the other branches of government and to the voters.

Q: Are we seeing a crisis in public confidence in the judicial system? And if so, what is the AJS doing in response?

A: Yes! After the first O.J. Simpson trial, public opinion polls showed that confidence in the jury system was at an all time low. However, after the McVeigh verdict, the media spoke positively of the jury system.

We believe that the real crisis is the lack of accurate information about our courts and the responsiveness of many of our more innovative judges and court personnel to calls for reform. We hear daily about some new reform in our jury system or new customer service strategies or improvements in codes of judicial conduct and ethics. But the public never hears about these things.

Judges and personnel work hard to make the courts more "user-friendly."

However, the crisis of confidence is also being expanded because these innovations are virtually unknown by the public.

What we at AJS do is try our best to fill this vacuum of information with facts and to respond to unfair or exaggerated stories about judges.

Q: AJS is planning a sentencing symposium. What was the impetus for the project and what does the AJS hope to accomplish with this project?

A: We are concerned that judges have been left out of the sentencing policy debate. Even though we depend on judges' good sense and experience to make effective sentencing decisions, their discretion and independence

Throughout its 84 years, AJS has promoted the principle of judicial independence and a Judiciary that is free to issue fair and just rulings without bowing to popular or political pressures.

to do so has been eroded away by a range of sentencing reforms that have been implemented over the past 20 years. The primary objective of this symposium, funded primarily by the State Justice Institute, is to give the Judiciary the "voice" that has been lacking thus far in the formulation of sentencing policy.

Q: AJS has projects in the works to enhance courthouse services in state courts. What has been learned that may be applicable to federal court?


A: Courts must not only dispense fair and impartial justice, they must treat court "customers" fairly and courte-

ously. This is why AJS has developed a training program on customer service for court employees. Court employees at the pilot test sites demonstrated the desire to serve their customers well and were pleased to have the tools provided in the curriculum. Kate Sampson, the project director, says the training program is as applicable to the federal courts as it is to state courts.

Q: The AJS has planned a fall conference of both state and federal court personnel. Can you tell us why the conference was planned, what it hopes to accomplish, and some of the issues to be discussed?

A: The Midwest Conference on State-Federal Judicial Relationships will provide an opportunity for judges serving on courts within the Sixth, Seventh, and

Eighth Federal Circuits to communicate and cooperate on a range of important issues of mutual concern.

The conference will give judges a forum to determine what are the most important issues associated with judicial independence, public confidence in the courts, media relations, and state-federal resource sharing. They will then have the opportunity to make recommendations on how to enhance cooperative efforts in order to address these issues. It will be interesting to find out how many of these issues lend themselves to state-federal cooperation and what recommendations the participants will make at the close of the sessions. 

Courts Improvement Bill Introduced in House

In his capacity as Secretary of the Judicial Conference, Administrative Office Director Leonidas Ralph Mecham transmitted to Congress on July 11, 1997, a draft of the Federal Courts Improvement Act of 1997. Prior to the August recess, the bill, H.R. 2294, was introduced in the House by Representative Howard Coble (R-NC). "The provisions contained in this bill will have a significant impact on both the criminal and civil operations of the courts," wrote Mecham to leaders in the House and Senate, "and will enhance the delivery of justice in the federal system." The provisions address administrative, financial, personnel, organization, and technical changes that are, said Mecham, "necessary for the efficient operation of courts and their supporting agencies." The Senate probably will

wait for House action before considering the bill.

Some key provisions would

- Extend the Judiciary Information Technology Fund by deleting the current sunset date of September 30, 1998.
- Repeal in-state plaintiff diversity jurisdiction, but would not apply to or limit the applicability of the right of removal under existing law of defendants who are sued by a diverse plaintiff in the courts of the plaintiff's home state.
- Give magistrate judges the power to exercise criminal contempt authority and additional civil and criminal contempt authority in civil consent and misdemeanor cases, and establish limits on the penalties magistrate judges may impose for criminal contempts, while allowing the magistrate judge the option of certifying egregious conduct to the district court for further contempt proceedings.
- Increase the case compensation maximum amounts for CJA attorneys, and increase the case compensation maximum applicable to counsel representing non-habeas corpus petitioners.
- Authorize judges to carry firearms for purposes of personal security, and establish a firearms training program.
- Change the Rule of 80 age and service requirements for retirement to senior status by justices and Article III judges to allow senior status at age 60, so long as the combined age and years of service equal 80.

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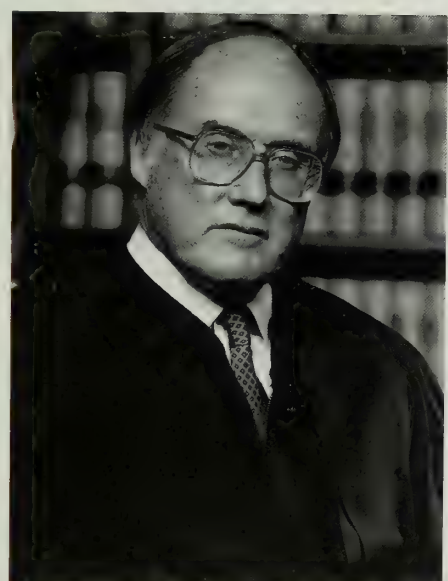
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Judicial Conference of the United States Celebrates 75th Anniversary



**Chief Justice
William H. Rehnquist**
Presiding 1986-Present

"The Judicial Conference of the United States celebrates its 75th anniversary this year. I have been honored to preside over the Conference for 11 of those years, and during that time I have had occasions to appreciate the dedication and the ability of its members and the members of its committees. They have worked tirelessly to improve the quality of the Judiciary.

Over the last 75 years, the Conference has struggled with recurring issues: rising court caseloads and limited resources to deal with them; judicial vacancies and the impact they have on the courts; problems involving court management and administration; and sentencing disparities and the guidelines created to eliminate them. The Conference has responded competently to the issues it has confronted, providing an administrative structure as the Judiciary has grown—and that growth has been enormous. A caseload that numbered in the hundreds in 1922 now numbers in the hundreds of thousands.

In responding to all of these issues, the Conference and its committees have served the Third Branch well, safeguarding the interests of the federal courts and formulating the policies and plans that have assisted the Judiciary in fulfilling its important mission. I am confident that the Judicial Conference will continue to perform these vital functions for the Judiciary."

INSIDE An historical overview of the Judicial Conference, its committees, the issues, and the people who have served.

The Judicial Conference of the United States 1922-1997

The 75-year history of the Judicial Conference is a reflection of the commitment of its members to the administration of the courts. Their success was probably best described in 1950, by Attorney General J. Howard McGrath, who told the Conference, "The annual meeting of the Judicial Conference is one of the reassurances that in our country the state is still the servant of its people and not a tyrant over them. With its plenary concern for the efficient administration of justice under law, the Conference is a sober reminder, above the clamor of temporary exigency, that our ship of state continues to maintain that course." The following are highlights of a 75-year voyage that has taken the Conference to where it is today.



Members of the Second Conference of Senior Judges of the U.S. Courts of Appeals, with Chief Justice William Howard Taft, third from the left in the front row, calling on President Calvin Coolidge at the White House, September 23, 1923.

Collection of the Library of Congress

The Judicial Conference: An Historical Perspective

In 1922, three days after Christmas, the Conference of Senior Circuit Judges met in the Capitol in the rooms reserved for the Supreme Court—the present Supreme Court building having not yet been built. Chief Justice William Howard Taft presided. Although it was sometimes called the federal judicial council, it is more familiar today as the Judicial Conference of the United States.

The Conference was the response to years of criticism of the federal judicial system over such “causes of popular dissatisfaction” as delay and cost of litigation. Taft, himself a former federal judge, lectured widely on the need for court reform almost from the moment he left the White House in 1913, using as his pulpit his position as president of the American Bar Association and later as Chief Justice, to push for change. What Attorney General Harry M. Daugherty described in 1921 as “a generally congested condition in the Federal dockets” was the result of Congress increasing the jurisdiction of the federal courts through legislation such as the National Prohibition Act.

Senator Albert B. Cummins of Iowa, the principal legislative sponsor of legislation to create the Judicial Conference, described the circumstances in the courts: “When we contemplate a situation in which thousands and thousands of persons accused of crime must lie in jail for a year or two years, if they are unable to discharge themselves by giving bond, awaiting trial, and when we reflect upon the fact that in many parts of the United States

it is utterly impossible to secure the trial of a civil suit within a year or two years, where both attorneys and parties are ready to proceed with the trial, it is to me a source of great humiliation.”

On September 14, 1922, Congress passed legislation creating 25 new judgeships to deal with the immediate crisis and also creating an advisory body of the senior (now chief) federal judges on the courts of appeals, to meet once a year in Washington, where reports would be heard on the state of district court dockets and where recommendations could be made for additional judicial assistance. President Warren G. Harding signed the legislation into law soon after.

The first Conference session was attended by the Chief Justice, the attorney general, and the chief judges from each of the nine judicial circuits. Later, the number of Conference members increased with the number of circuits, with the creation of the Tenth Circuit in 1929, the District of Columbia Circuit in 1937, and the addition of the former Court of Claims and the U.S. Court of Customs and Patent Appeals in 1957 and 1961, respectively. The

split of the Fifth Circuit in 1980 added additional members.

It was not until 1958 that district judges officially were included as members of the Conference, doubling the size of the Conference when Congress provided that the judges of each circuit should elect a district judge representative. The Director of the Administrative Office has served as Secretary to the Conference since the creation of the AO.

After the initial December 1922 session, the Conference met next in the fall of 1923, as required by statute. Originally the Conference met once a year, but over the years increasingly scheduled a special session in the spring. By the 1950s, the Conference was meeting on a regular basis each spring and fall.

By 1929 the Conference could report, “The Conference greatly rejoices at the urgent demand by the public generally for more efficiency, more speed, and more certainty in the prosecution of the general criminal law. . . .” but that court efficiency was “substantially impeded by the lack of sufficient and competent help.” The Conference asked Congress for more money to obtain and retain competent assistance.



Until the completion of the Supreme Court Building, the Conference of Senior Circuit Judges met in the Capitol, in rooms reserved for the Supreme Court, formerly the Senate chambers.

Chief Justice William Howard Taft

The following "conversation" with Chief Justice William Howard Taft, the first presiding officer of the Judicial Conference, is based upon Taft's letters, opinions, and speeches. Some liberties have been taken to create a conversational tone.

Q: Would you consider yourself an advocate of administrative reforms in the Judiciary?

A: As I told Congress in 1922, I have always been and am now very interested in rendering the federal courts more efficient in the dispatch of business.

Beginning about 1918 there had been a marked increase in the number of cases coming to the U.S. district courts. To assist the courts with their congested caseloads, I had pressed, while President of the United States, for what I called my flying squadron of judges—judges able to travel to courts in need of temporary support, but this idea was not accepted. Gentlemen have suggested that I would send dry judges to wet territory and wet judges to dry territory. I said even then that judges should be independent in their judgments, but they should be subject to some executive directions as to the use of their services, and somebody should be made responsible for the whole business of the United States.

But I wasn't the first to propose reforms to the courts. Roscoe Pound addressed the American Bar Association in 1906 taking as his title, "The Causes of Popular Dissatisfaction with the Administration of Justice." The ABA created a special committee in 1907 on means to prevent delay and unnecessary cost in litigation. It was after these

actions that the Judicial Code of 1911 was adopted, making the district courts the only courts with general jurisdiction, and abolishing the old circuit courts.

Q: It has been said that your advocacy, more than any other factor, led to the formulation of the Judicial Conference.

A: It is true that matters might have remained as they were in 1911. However, I took it upon myself to speak and write about making the American courts more effective as soon as I left the White House. I also vigorously opposed proposals for the recall of judges and of judicial decisions, a point of much conten-

judges to direct business and economize judicial force, to mould their own rules of procedure, and the learning, ability, and experience

Chief Justice William Howard Taft, *presided 1921-1930*

"During my Presidency I was not reluctant to use the power of my office to support members of the Judiciary."

tion between President Theodore Roosevelt and myself while I served in his cabinet.

I greatly admired the English Judicature Act of 1871, which I believe worked a complete reform. Two great features of the English system are the simplicity of its procedure and the elasticity with which that procedure and use of the judicial force provided by Parliament can be adapted to the disposition of business. The success of the system rests on the executive control invested in a council of

of the individual judges. I made a number of proposals in line with this example. I also helped form the American Judicature Society to study and promote modernization of the judicial system. When I was elected president of the ABA in 1913, I presented a comprehensive program for the betterment of the federal courts.

Q: How did you originally envision this council of judges?

A: It seemed to me that either the Supreme Court or the Chief Justice should be given an adequate executive force of competent subordinates to keep close and current watch upon the business awaiting dispatch in all the districts and circuits of the United States, to make periodical estimates of the number of judges needed in the various districts to dispose of such business, and to assign the adequate number of judges to the districts where needed. Then the Supreme Court by making the rules of procedure and by distributing the judicial force could greatly facilitate the proper disposition of all the legal business in the country and in a sense become responsible for its dispatch.

Q: How did the Judicial Conference evolve from this?

A: By 1921, Attorney General Daugherty had appointed a committee of judges and U.S. attorneys to identify problems and recommend remedies. The Congress convened hearings in 1921 and 1922. In 1921, my first full year as Chief Justice, I testified before the Senate Committee on the Judiciary and presented my views. At that time I recommended a provision for a council or committee of nine senior circuit judges, one from each circuit, and the Chief Justice to meet each year and agree informally as to where the judges are needed and whence they can be had. I recommended, however, that the function of annually surveying the judicial business and relative need for judges was to be placed not in the Supreme Court but in this council of senior circuit judges. And it was originally called a Conference of Senior Circuit Court Judges. Subsequently, a bill was introduced in the Senate with both the Attorney General's committee report and my own recommendations, along with

the provision for 25 new district judges.

Q: Was the idea of a Judicial Conference of judges readily accepted?


A: One senator, I remember, objected to the idea of a Judicial Conference saying, "It means absolutely nothing on earth except a junket and a dinner." Other senators were concerned that judges should remain as unfettered as possible, without regulation that might endanger the independence of the federal courts. Senator Spencer of Missouri, I believe, won the day for us when he said, "The judicial business of the United States is largely administrative. There is a business side to it as well as the law side. There are practices in the different circuits which are commendable. There are some that could be improved. Both are remedied by [the] conference. It seems to me there is very great advantage when the circuit judges get together once a year to discuss the method of transacting business, the state of their dockets, the things that have proved advantageous, the things that have proved disadvantageous. The result of it all is a distinct benefit to the administration of justice and that is precisely what the conference provides for."

Q: Can you tell us something about the first meeting?

A: The 1922 statute was not explicit in making the Chief Justice a voting member. I was its presiding officer. I, however, immediately established the precedent of voting. At the first meeting, December 28, 1922, we were a small enough group, just 10 members and myself at the outset, that intensive discussion on any number of topics was possible. Nonetheless, to focus

thought, I appointed five committees, which I charged with reporting the following year. This habit of appointing committees on particular subjects rather than standing committees continued for a number of years. We met in the Old Senate Office Building, but later moved to our own new building.

Q: You've been described as an "activist," in terms of being an executive and judge who promoted judicial causes. How would you describe your philosophy?

A: During my Presidency I was not reluctant to use the power of my office to support members of the Judiciary. I was able to secure substantial pay increases for judges, and I appointed six members to the Supreme Court. Only my fellow presidents George Washington and Franklin D. Roosevelt appointed more. As Chief Justice I served, I believe, during a time of no greater court-congressional conflict. In that time I was a conservative jurist and an effective lobbyist for the Judiciary. As to my philosophy, let me read to you from a letter I wrote in 1922, "Every judge should have constantly before him that the reason for the existence of the courts is to promote the happiness of all the people by speedy and careful administration of justice, and every judge should exert himself to the uttermost to see that in his rulings and in his conduct of business he is, so far as his action can accomplish it, making his court useful to the litigants and to the community." 

The Judicial Conference And Its Committees

At the 1922 Conference session, the first committees were created, inaugurating a custom that continues today with Conference committees playing an active role. Taft felt some focus was needed to the discussions, so he authorized committees with the rather weighty titles of the Committee to Consider the Rules and Procedure of the Conference, Forms and Procedure for the Transfer of Judges; the Committee on Need and Possibility of Transfer of Judges; the Committee on Recommendations to District Judges of Changes in Local Procedure to Expedite Disposition of Pending Cases and to Rid Dockets of Dead Litigation; the Committee on Recommendations as to Bankruptcy Rules; the Committee on Recommendations as to Equity Rules; and the Committee on Amendments to Appellate Procedure. The titles alone indicate the broad functional areas that Taft and the Conference members saw as their province.

A core of program and policy committees has evolved over time with responsibility for such areas as budget, court administration, codes of conduct, facilities, the bankruptcy system, intercourt assignments, rules, and criminal law and probation.

Some committees have been formed in response to specific statutory mandates or authorization, such as the rule-making committees, the advisory committee to review circuit council conduct and disability orders, and the committee on financial disclosure.

In 1969, Chief Justice Burger suggested the formation of an Executive Committee to help in the administration of Conference affairs.

The AO's Office of the Executive Secretariat coordinates administra-



Chief Justice Charles Evans Hughes, fourth from left in the front row, and members of the Judicial Conference in front of the Capitol Building in October 1930.

Collection of the Library of Congress



Three past chairs of the Judicial Conference Executive Committee, Chief Judges Charles Clark (5th Cir.), John Gerry (D. N.J.), and Wilfred Feinberg (2nd Cir.) in 1994.

tive support to the Conference and its Executive Committee, and also coordinates the activities of the Executive Secretariat, which consists of senior members of the AO's professional staff who dedicate all or a substantial portion of their time to the work of the Conference and its committees.

The Chief Justice, through the Conference, also has, from time to time, established special committees, ad hoc committees, or advisory committees.

These committees have been assigned, for example, to examine jury selection (1941), implement the criminal justice act (1964) and the federal magistrates system (1968), study the sentencing guidelines (1986) and electronic sound recording (1983), coordinate bicentennial projects (1975), examine habeas corpus in capital cases (1988), address the substantial number of asbestos personal injury cases



Chief Justice Warren E. Burger, center, with members of the Bicentennial Committee (left to right), Judge Damon Keith (6th Cir.), Judge Helen Nies (Fed. Cir.), Burger, Chief Judge Robert Murphy (Md. Ct. App.) and Judge Dolores Sloviter (3rd Cir.).

(1990), explore the right to competent counsel in federal court regardless of the means of the accused (1991), and propose long-range plans for the Judiciary (1991).

The only Conference committee directly created by Congress was the

Federal Courts Study Committee in 1988, which was established to study the U.S. courts and several state courts, and to recommend revisions to the law that would develop a long-range plan for the judicial system.



Federal Courts Study Committee chair, Judge Joseph F. Weis, Jr. (3rd Cir.) (right), confers with committee member Representative Robert W. Kastenmeier.

In 1986, upon taking office and following the precedent set by Chief Justices Earl Warren and Warren E. Burger, Chief Justice William H. Rehnquist appointed a committee to study the operation of the Judicial

Conference and its committees. The following year, the Conference adopted the committee's report and dramatically changed the structure of the Conference agenda by establishing consent and discussion calendars, consequently changing how the Conference conducts its business during its plenary sessions. Committee membership also was revamped, establishing term limits and therefore opening membership to more judges who wished to serve.

The Conference relies heavily on its committees, which review issues and make policy recommendations to the Conference. To make informed recommendations, the committees have conducted studies, initiated pilot programs, sponsored research, solicited court input, and held public hearings to gather information on issues or proposed programs. This follows a pattern established early in the Conference's history of soliciting comment from throughout the Judiciary and frequently from other branches of government and the public.

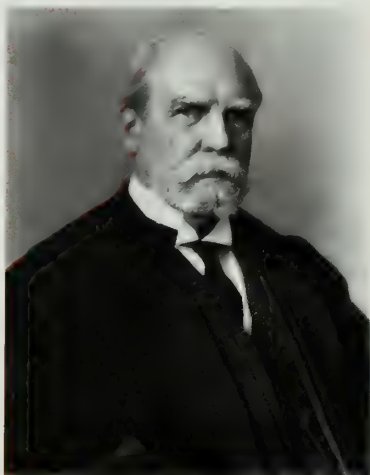
Although this process may strike some outside the Judiciary as time-consuming, the process considers the needs of the courts and the administration of justice. The cameras in the courtroom question is a good example of this delibera-

"As a career prosecutor, I know how important the Judicial Conference work is. I have been very happy to work with its Executive Committee, and I wish them continued success."

Attorney General Janet Reno

Chief Justice Charles Evans Hughes

Presided 1930-1941



"One of the great services of Chief Justice Charles Evans Hughes to the cause of justice was that which he rendered as Chairman of this Judicial Conference, which had been created during the Chief Justiceship of his predecessor, Chief Justice Taft. It was during his Chairmanship that the Administrative Office Act was passed. Under that act the federal judiciary was freed from dependence upon an executive department of the government with respect to fiscal and administrative matters in the federal courts and was given adequate power of self regulation and supervision. It was he who set up the AO and assured its success by bringing to its support his own splendid powers of administration, and it was he who, in the administration of the Rules of Procedure Act, secured for the country a modernized and efficient system of legal procedure in keeping with modern conditions which has revolutionized the practice of the federal courts."

*From a 1948 resolution
by the Judicial Conference*

tion. Beginning in the early 1960s with television in its infancy, the Conference heard from its Court Administration Committee on "the increasing activity by the press, radio, and television broadcasting media." At that time, it agreed with the committee's assessment that cameras in the courtroom would not be "in the interest of efficient judicial administration" nor would it "aid in the preservation of the right to a fair and impartial trial." Over the years, as the courts and the media changed, the Conference

would revisit the controversy surrounding cameras in the courtroom, commissioning studies and implementing pilot programs in the courts.

Caseload

In many ways the first Conference session was a microcosm of all the meetings that were to follow. The Conference received reports on the business of the courts and about



In 1949, the Conference received a request to install a microfilming system in a court that stated, "It is estimated that one file cabinet approximating 3'x3'x6' in size, would provide adequate and sufficient storage space for the records involved for 35 years—the records under the present system would require 1,300 cubic feet of space." By 1951, two-thirds of the clerks' offices were using prenumbered receipt systems, somewhat less than one-third had adopted a card index system, and six districts at the close of the fiscal year were microfilming current records. In 1967, a new computer system was installed in the AO, replacing the punchcard system. The new IBM System 360, Model 20, with four magnetic tape drives was used for budget, accounting, and payroll purposes as well as for the statistical work of the AO.

pending legislation, intercourt assignments of judges, court personnel, and the appropriation of funds. At that time the Department of Justice was responsible for collecting statistics on case filings in the federal courts, and at the second meeting in 1923, a report on the caseload of the courts also was delivered by the attorney general, as required by the 1922 act. This continued until 1940, when the Administrative Office was established and the director of the AO took over the duty. However, to this day, the Attorney General is invited to attend Conference sessions upon request of the Chief Justice.

The caseload of the federal Judiciary has been a determining factor in the Conference actions. The Conference has reacted to legislation that would increase caseload, instituted court programs to manage caseload, requested additional judgeships to handle the caseload, and formulated rules to govern case procedure.

Legislation

From the beginning, pending legislation was discussed at Conference meetings. In 1922 one topic was a bill to form a commission "to formulate recommendations for statutory changes in the practice and procedure in the federal courts to enable a more expeditious dispatch of their business." Over the intervening 75 years, the Conference has reviewed, endorsed, opposed, or taken no position on nearly

every piece of legislation introduced in Congress that might affect the courts, from the most comprehensive crime bill to the smallest proposals for technical changes in judicial procedure or court operations.

While legislative priorities and concerns have varied widely over the years, the Conference consistently has resisted efforts to increase the jurisdiction of the federal courts. On more than one occasion the Conference also has opposed legislation requiring the imposition of mandatory minimum sentences, because they limit judicial discretion in sentencing and increase the number of criminal trials and the number of appeals in criminal cases.

Congress frequently has proposed the creation of special courts, but the Conference historically has regarded specialized judicial tribunals, as "an undesirable and unnecessary step in the direction of further disintegration of the Federal judicial system." In 1971, the Temporary Emergency Court of Appeals was created by the Economic Stabilization Act—and abolished at the Conference's request in 1993. A Special Court was formed under the

Regional Rail Reorganization Act of 1973—and abolished in 1996. In 1978, Congress established the Foreign Intelligence Surveillance Court and its Court of Review, providing for a special court of seven district judges. In 1996, legislation created an Alien Terrorist Removal Court. However, it was on the Conference's recommendation that Congress passed legislation in

1968, establishing the Judicial Panel on Multidistrict Litigation in response to the court's struggle to coordinate almost 2,000 related cases pending in 36 districts around the country.

On occasion, the Conference has had a hand in creating legislation. The Conference Committee on the Jury System drafted the landmark law on the federal jury system, which was enacted by Congress as the Jury Selection and Service Act of 1968. In recent history, the Conference has sent proposed federal courts improvement bills to Congress, with provisions to make improvements in the operation and administration of the federal courts.

The Conference also has been obliged to send draft legislation to

"The Judicial Conference session that I recall so well occurred when district judge representatives were added as members of the Conference. Previously the Judicial Conference met in the small conference room adjoining the Chief Justice's chambers. But that room was entirely too small to hold the enlarged Judicial Conference. So for the first time in history a Judicial Conference session was held in the large West Conference Room in the Supreme Court Building. Later the sessions were moved to the East Conference Room."

Joseph F. Spaniol, Jr., AO deputy director 1975-1985 when he was appointed clerk of the Supreme Court, secretary to the rules committees, and attended Conference meetings from 1957 to 1985.



Judge Barefoot Sanders (N.D. Tex.), chair of the Committee on the Judicial Branch, testifies at a Senate hearing on the 1995 Judicial Improvements bill.

"In 1990, I believe, while the Executive Committee was meeting... several of us prevailed upon the majority of the members... to recommend to Congress, that the representation on Judicial Councils of each Circuit be equalized between circuit and district judges. Former Chief Judge Sam Ervin of the Fourth Circuit and I are convinced that this idea, ultimately adopted by Congress, was very important to the improved morale of the district judges."

Judge John F. Nangle (E. D. Mo.), member of the Judicial Conference 1985 - 1991, the Executive Committee 1987 - 1991, the Committee to Study the Judicial Conference, the Ad Hoc Committee on Asbestos Litigation, and chair of the Judicial Panel on Multidistrict Litigation.

adjust judicial compensation. And, of course, the Conference biennially proposes additional judgeships to Congress.

Vacancies and Judgeships

Prior to 1964, there was no system in place within the Judicial Conference for soliciting requests for additional judgeships. Requests were received from courts, mem-

bers of Congress, bar associations, and circuit councils. In 1964 the Conference adopted a policy of making a comprehensive report to Congress approximately every four years on the judgeship needs of the appellate and district courts. In 1977, the Conference approved judgeship surveys every other year. This system has proven effective in transmitting requests to Congress. However, there has been congressional resistance at times to authorization of those judgeships. In 1958, in response to a letter from the AO urging action on an omnibus judgeship bill, Senator Lyndon B. Johnson, the Senate majority leader, replied that, in his view, "a caseload factor based solely on the number of filings and pending cases was a most unreliable basis upon which to make a determination of the need



Judge Lloyd George (D. Nev.), chair of the Committee on the Administration of the Bankruptcy System, and Representative Jack Brooks before a 1992 House hearing on new bankruptcy judgeships.

for judges and that if caseload is to be the determining factor there must be a more refined breakdown of each particular caseload." The Senator requested additional statistical data, which were furnished by the AO, and eventually Congress took action on the judge-

ships. This pattern has continued over the years. It has been rare for Congress to act quickly on the additional judgeships requested by the Conference. When it finally acts, however, Congress has generally established all the judgeships recommended by the Conference. Sometimes, too, Congress has created judgeships for which no Conference request has been made. Since 1972, Congress has created 31 such judgeships.

Filling judicial vacancies also has been a long-term problem. At the end of World War II, the Attorney General assured the Conference that both he and the President realized the necessity of promptly filling all the vacancies on the federal bench. But by 1948, AO Director Henry P. Chandler could draw the Conference's attention to "the high incidence throughout the country of disability of federal judges on account of illness," pointing out that, "during the last year, at least 20 circuit and district court judges were partially or totally incapacitated for long periods of time because of illness. These illnesses were in large measure attributable to overstrain in work. . . . It empha-



Judge Robert F. Peckham (N.D. Cal.), chair of the Subcommittee on the Civil Justice Reform Act of 1990 (photo left), and Judge Walter T. McGovern (W.D. Wash.), chair of the Committee on Judicial Resources, testify before the Senate Judiciary Committee in 1990 on civil justice reform and the need for new judgeships.

**Chief Justice
Harlan Fiske Stone**
Presided 1941 to 1946



"It is but just to say he was a jurist of great learning in the law, whose indefatigable industry led him to explore all the sources of the common law and the constitutional and international law to find precedent and justification in support of the reasoning of his great mind. In our association with him in the discharge of the duties imposed on this Conference he was always patient, sympathetic, cooperative, and his guiding hand was invariably useful and potent in leading the Conference to a right conclusion."

*From a 1946 resolution
by the Judicial Conference*

sizes all too well the necessity for speedy appointments to judicial vacancies as well as the need for more judges to cope with the increasing burden of litigation in the federal courts." In 1988, the Conference noted the adverse effect Article III judicial vacancies of more than 18 months have on the courts and litigants and said that all such vacancies create judicial emergencies. In 1997, judicial vacancies have numbered over 100, generating a political debate over whether or not

this constitutes a pending crisis in the federal courts.

Dealing with Allegations of Judicial Unfitness

Conference authority over Article III judgeships did not extend to dealing with charges of judicial unfitness or misbehavior until recently. Discipline of federal judges, short of impeachment, still is handled as part of the general responsibilities of the circuit judicial councils, which had been created by statute in 1939. However, the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 altered this procedure, involving for the first time the Judicial Conference. The act of 1980 placed the responsibility for administration of the judicial discipline system in the hands of the chief judges of the circuits, the circuit councils, and, ultimately, the Judicial Conference. This regularized the procedures in the councils and provided for Conference action in rare cases of serious disability or misbehavior. The Conference considers petitions for review of judicial council actions following a circuit investigation. If the Conference concurs in a circuit council determination that impeachment may be warranted, the Conference transmits this determination and a record of the proceedings to the House of Representatives. The Conference met to consider impeachment proceedings against a federal judge for the first time in June 1986, also the first time since the mid-30s that an impeachment proceeding of a federal judge had been initiated. In 1989 Conference action again was required in impeachment proceedings involving two federal judges.

In 1990, Congress created the National Commission on Judicial Discipline and Removal to investigate problems related to the discipline and removal of Article III judges and evaluate alternatives to current arrangements for judicial discipline and removal. In 1994, the Conference Committee to Review Circuit Council Conduct and Disability Orders reported it had studied recommendations addressed to the judicial branch by the commission. In response to the committee's recommendations, the

Conference took a number of actions to implement the commission's proposals. Congress took no action on the recommendations. There now are renewed calls to consider the commission's report following recent threats by members of Congress to use impeachment as "a tool for keeping judicial power in check," and the introduction of the Judicial Reform Act of 1997 that would change the way judicial

"[A] fine example of the Conference members' collective creativity is the recently completed Long Range Plan for the Federal Courts the first time ever that federal judges have been given the opportunity to look beyond that next docket or calendar to plan for the future of their court. For an institution that has been accused of living in the past, the development of a planning process and the draft of a functional plan for the future was a momentous achievement."

Judge Otto R. Skopil Jr. (9th Cir.), former chair of the Committee on the Administration of the Federal Magistrates System and former chair of the Committee on Long Range Planning.

"In all my thirty-three years plus as a United States District Judge, my membership on the Judicial Conference ... is the greatest experience I have ever had. I only regret that every circuit and district judge in our system ... could not experience being a member of the Judicial Conference which affords such a wonderful guidance and direction for our entire judiciary."

Judge Charles E. Simons, Jr. (D. S.C.), represented the 4th Circuit district judges on the Conference from 1973-1979, and was a member of the Advisory Committee on Codes of Conduct, and the Committee on Court Administration, the Committee on the Judicial Branch; former chair, Subcommittee on Federal Jurisdiction

misconduct complaints are handled. Judicial Conference representatives have testified before the House and Senate on this reform act.

Rules

One area in which the Conference has been the most active is in the continuing development of federal rules of practice, procedure, and evidence. Under the Rules Enabling Act, the Supreme

Court prescribes both "general rules of practice and procedure and rules of evidence" for cases in the district courts and courts of appeals and "general rules [governing] the forms of process, writs, pleadings, and motions and the practice and procedure" in bankruptcy cases. By this legislation, Congress has delegated to the Judiciary nearly all authority to establish rules for the courts, but it reserved to itself the power to reject, amend, or defer any such rules.

For nearly 40 years, the Conference has played a pivotal role in this process. It has a statutory mandate to study continuously the operation and effect of the existing rules, and to consider and recommend to the Supreme Court any alterations or additions to the rules that promote "simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay." The Conference's standing Committee on Rules of Practice and Procedure and five advisory committees on civil, criminal, appellate, bankruptcy, and evidence rules carry out this function by conducting studies, drafting new and amended rules and explanatory committee notes,

While the "modern era" of federal rules began with the Rules Enabling Act of 1934, the Conference was not involved at first in the rulemaking process. In its initial efforts to establish uniform, national rules—resulting in the first Federal Rules of Civil Procedure (1938) and Criminal Procedure (1946)—the Supreme Court was aided by "blue ribbon" committees of legal experts appointed by the Court itself. In 1958, however, Congress enacted legislation that shifted to the Conference primary responsibility for developing new and revised rules. Exercising that authority, the Con-



Chief Justice Warren E. Burger and newly appointed AO Director Leonidas Ralph Mecham in 1985.

conducting hearings, and making recommendations for Conference action. Through the decades, members of the legal profession—represented by private practitioners, law professors, Justice Department officials, and state court representatives—have been partners in the rulemaking process, both as participants in the various advisory committees and as the commenters on proposed rules and rule changes.

ference has recommended, and the Supreme Court adopted, the Federal Rules of Appellate Procedure (1968), the Federal Rules of Bankruptcy Procedure (1973), and the rules governing post-conviction collateral (habeas corpus) remedies (1977). The same process has been used to amend the various sets of rules, including the Federal Rules of Evidence that were adopted by legislation in 1975.



The Judicial Conference of the United States in March 1984, meeting in the East Conference Room of the Supreme Court.

The standing and advisory rules committees review their operating procedures periodically to ensure that rules are adopted only after appropriate deliberation and involvement by the bench and bar. In adopting the 1995 *Long Range Plan for the Federal Courts*, the Conference recognized the importance of maintaining the "time-tested and orderly" process under the Rules Enabling Act. The plan recommends that the process be the exclusive mechanism for developing rules for the federal courts, and that continued efforts be made to achieve greater uniformity of practice and procedures and obtain significant participation in rulemaking by the bar and interested members of the public.

Court Administration

The Conference's Executive Committee approves the annual spending plan for the federal Judiciary. The Conference's Budget

Committee formulates the appropriations request to Congress for approval by the Conference, and, in recent years, the committee's chair and AO Director Leonidas Ralph Mecham have appeared before congressional appropriations committees to make the case for the Judiciary's budgetary needs. On the occasions when the spending bills failed to get congressional approval before the end of the fiscal year, the Conference's Executive and Budget Committees have worked closely with AO staff to keep the courts open and to secure the critical continuing appropriations.

Current Conference initiatives to improve financial management include decentralizing major budget and management functions to the courts to improve efficiency and court flexibility in managing funds, and implementing a standardized, automated accounting system for the courts.

Economizing on judicial resources has been a long-term Conference concern. In 1948, the Conference formed the Committee on Ways and Means of Economy in

Chief Justice Fred M. Vinson

Presided 1946-1953



"We, as members of this Conference, have suffered the great personal loss of one whom we loved and respected as a man and whose service as presiding officer of the Conference had made it an instrumentality of great and ever-increasing importance in the administration of justice. Chief Justice Vinson came to the office of Chief Justice at a critical period in the history of our country, a period fraught with many dangers and difficulties. He brought to the performance of his duties a wide knowledge of men and affairs as well as of the law, wisdom ripened by experience and a profound and intimate knowledge of the nature and workings of our government having theretofore served with distinction in the legislative, executive, and judicial branches. This experience gave him an unusual grasp of governmental problems and a sureness in approaching and dealing with them rarely equaled in our history. His knowledge of the legislative branch and his personal acquaintance with the leaders of that branch enabled him to develop between this Conference and the Congress a relationship which has resulted in a better understanding of problems affecting the judiciary and the passage of legislation which has done much to improve the courts and the administration of justice therein."

*From a 1953 resolution
by the Judicial Conference*

"I served as the representative of the District Judges of the Second Circuit from 1982 to 1983. I believe I was the only woman member of the Judicial Conference at the time. I had just become the chief judge of our court and I was fulfilling a year of the unexpired term of my predecessor, Chief Judge Lloyd McMahon. I believe I was also the only woman chief judge at the time."

Judge Constance Baker Motley (S. D. N.Y.), member of the Committee on Records Disposition and the Committee on the Administration of the Bankruptcy System.

the Operation of the Federal Courts with economy committees in all the circuits. Their reports indicated that "an exhaustive and intensive study had been made and, as a result thereof, considerable improvement had already been achieved." In 1993 the Budget Committee's Economy Subcommittee was established to pursue ways to

economize in the federal Judiciary. Its report on the optimal utilization of judicial resources chronicles the extensive cost-saving measures that have been taken throughout the Judiciary in recent times.

Through the budget process, the Conference has helped shape the AO and the courts. The Conference sets standards for the hiring of, or salaries for, nearly every level of court employee, including probation officers, court reporters, law clerks and, at one time, court criers. The Conference establishes per diem rates for judges and sets standards for court automation. The Conference has funded programs to help the courts manage their caseloads, such as a pilot project on the use of computers for the administration of the jury system (1966), civil arbitration (1977), a two-year experimental program of videotaping court proceedings (1988), a two-year pilot study to examine the feasibility of interpreting by telephone (1989), an 8th Circuit pilot project to provide enhanced access by the deaf community (1991), and a 3rd Circuit one-year videoconferencing pilot

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Prior to testifying before congressional appropriations committees in 1994, Chief Judge Richard Arnold (8th Cir.), Judge John M. Walker Jr. (2nd Cir.), and AO Director Leonidas Ralph Mecham are briefed by AO staff.

project for oral arguments between Pittsburgh and Philadelphia (1991).

The Judiciary has not always controlled its own budget or administration. Before the Administrative Office was created in 1939, the Attorney General and the Department of Justice had responsibility for the Judiciary's accounts. There were frequent conflicts. Appropriated funds were provided jointly to the courts and the Department of Justice. In 1932, despite the Great Depression, the Conference warned, "While the Conference fully realizes the difficulties growing out of economic conditions and the imperative necessity for retrenchment in governmental expenses, the Conference deems it to be its duty to

set forth the actual needs of the judicial department."

In 1931, the Conference considered a proposal for a Chancellor of the United States to address the needs of the courts. In 1936, President Franklin D. Roosevelt proposed a proctor for the federal courts, a judicial administrator. This idea had surfaced many times before, along with suggestions for an administration bureau. But it was not until 1939 that Congress passed the Act creating the Administrative Office of

Chief Justice Earl Warren

Presided 1953-1969



"His period of service as Chief Justice coincided with an era of far-reaching constitutional interpretations. We witnessed new and different emphasis on fundamental rights of racial and religious minorities and of individual liberties under the Constitution. . . . We recall also the many years during which he presided over the Judicial Conference of the United States, giving it his leadership and guidance. . . . Finally, for showing us the virtues of exercising wise and compassionate judgment toward our fellowmen, we shall be forever in his debt."

*From a 1974 resolution
by the Judicial Conference*

the U.S. Courts. The Act gave the courts the power of managing their own business affairs, and "secure[d] an improved supervision of the work of the courts through an organization under judicial control." The AO director, as the administrative officer of the courts, would operate under the supervision and direction of the Conference.

In 1966 a Conference resolution called for the establishment of a Federal Judicial Center. The center was created to enable the courts, according to President Lyndon Johnson, who signed the legislation in 1967, "to begin the kind of self-analysis, research and planning necessary for a more effective judicial system."

The Conference continually makes recommendations to improve caseload management and the court system. Over the Conference's long history this has run the gamut from encouraging clerks' offices in 1951 to improve practices by adopting effective receipt systems, loose-leaf dockets, and card indices to directing the AO in 1985 to develop an office automation plan that encourages rapid implementation of ADP, telecommunications, and office automation.

The Conference has encouraged courts not only to look to each other for assistance but also to look outside the Judiciary. For example, in 1933, the Conference adopted a resolution confirming the usefulness of circuit conferences, which "serve to bring together all the federal judges of the circuit and thus to give opportunity for the consideration of problems . . ." The circuit conferences were authorized statutorily in 1939, by the same act establishing the AO. In 1993, the Executive Committee agreed with an idea, proposed earlier by Chief Justice Warren E. Burger, of holding a national conference with representatives from all three branches to study the problems facing the

federal court system. Three Branch Conferences were held in 1994 and 1996.

The Conference was instrumental in a dramatic change in judicial administration—the appointment of a circuit executive for each judicial circuit, as authorized by statute in 1971. Several years earlier, the Conference had approved a committee report recommending that each chief circuit judge be authorized to appoint an administrative assistant.

Although the General Services Administration builds the Judiciary's courthouses, the Conference has become a partner in the process. Shortly after World War II, the Conference Committee on Postwar Building Plans for the Quarters of the U.S. Courts submitted a manual setting forth general standards of design and construction for federal court quarters in federal buildings. In 1971, an Ad Hoc Committee on Courtroom Facilities, Design and Security was appointed. In 1984, the Conference adopted a *U.S. Courts Design Guide*, which was completely revised in 1991 with the Conference's ap-

"One of the most significant actions taken by the Judicial Conference of the United States was the creation of the office of circuit executive. Time has proven the value of circuit executives. It would be very difficult for a chief circuit judge to carry out his administrative duties, which have vastly increased over the years, without assistance and at the same time address his judicial duties."

Senior Judge John D. Butzner, Jr., (4th Cir.), chaired the Subcommittee on Judicial Statistics, the Ad Hoc Committee on the AO, the Ad Hoc Committee on Sentencing Guidelines and was a member of the Committee on the Administration of the Criminal Law. He currently serves as a member of the Panel to Appoint Independent Counsel.

"I first attended a meeting of the Judicial Conference in 1983. Chief Justice Warren Burger sat impressively at the head of the huge table around which judges gathered, beginning with the First Circuit representatives seated immediately to the Chief's right. . . . The only drawback in sitting right next to Chief Justice Burger was that he would often ask me to preside temporarily when he left the room. His exits could be precipitous, leaving me to preside over a debate I had only partially followed or—on one occasion—had not been listening to at all."

Judge Levin Campbell (1st Cir.) Judicial Conference member, 1983 - 1990; member of the Committees on Court Administration and the Bicentennial of the Declaration of Independence, the Executive Committee, the Committee to Study the Judicial Conference, and the Federal Courts Study Committee; former chair of the Subcommittee on Supporting Personnel.

proval, and the revision process continues today. In 1995, the Conference also approved the development of a five-year plan of courthouse construction projects. As the Judiciary undertakes the largest building program in its history, Conference representatives have testified frequently before

Congressional committees on the Judiciary's need for courthouses.

The Conference's timely recommendations have addressed both daily court management and

the critical problems that arise. Faced with a crisis, due in part to inordinate delay caused by the constantly increasing caseload, the Conference in 1970 authorized the Chief Justice to form a preliminary study committee to propose an agenda for modernizing the procedure and improving the efficiency of the courts. This materialized in 1972 as the Hruska Commission. In 1984,



On occasion, the duties of an Executive Committee chair include discussion of the Conference's recommendations with members of the press, as Chief Judge Gilbert Merritt (6th Cir.) demonstrated in 1995.

the Conference approved use of automated dockets for appellate, civil, and bankruptcy cases. In 1986, the Conference approved a report by the Ad Hoc Committee on Electronic Sound Recording that an "electronic sound recording program should be employed as a permanent part of the facilities and services available to the Judiciary." In 1988, the Conference authorized an experimental program of electronic access to court information for the public, and an experiment to videotape court proceedings. Reacting to concerns about uneven staffing levels in the courts when it met in 1994, the Conference implemented a staffing equalization plan to reduce or eliminate excess positions and reassign staff to needed areas. In 1995 the Conference expanded a videoconferencing pilot program for prisoner civil rights hearings, and approved a new Code of Conduct for Judicial Employees that updated, streamlined, and clarified existing code provisions. In

1995, the Conference also adopted the first comprehensive long range plan for the federal court system, the culmination of a four-year process.

Unfortunately, while the Conference has made recommendations over the years that have revamped the Judiciary's personnel system and assured personnel of pay on par with that of other branches of government and in the private sector, securing pay adjustments for judges has proven much more difficult. In 1981, the Conference endorsed the report of the Quadrennial Commission on Executive, Legislative and Judicial Salaries, created in 1980 to focus attention on the problem of inadequate compensation, survivors' annuities, per diem, and life and health insurance benefits. Despite the commission's report, by 1989, the Committee on the Judicial Branch reported, "The single greatest problem facing the Judiciary today is obtaining adequate pay for judicial officers. Judges have suffered an enormous



The Judicial Conference meets twice a year at the Supreme Court, while many committee meetings are conducted at the Thurgood Marshall Federal Judiciary Building a few blocks away.

erosion in their purchasing power as a result of the failure of their pay to keep pace with inflation. It is becoming more and more difficult to attract and retain highly qualified people on the federal bench." The Ethics Reform Act of 1989 provided a mechanism to adjust judicial pay, and federal judges finally received an approximately 30 percent pay adjustment in 1991. But when judges were denied a pay adjustment in 1993 and in subsequent years, the

problem of adequate pay again became critical.

Conclusion

Today the Judicial Conference regularly meets twice a year, as does its network of committees. Conference and committee members often communicate by fax and e-

mail, and its Executive Committee uses the latest technology for its regular conference call meetings. Conference actions are announced through preliminary reports, and through press releases posted on the Internet within hours of Conference sessions concluding.

While today's Conference may be a more efficient and democratic body than in the past, its mission has remained the same. Running like threads through its proceedings are such concerns as case management, judgeships, finances, and court staffing. It also is evident that throughout its history the Conference has taken seriously its responsibility to review and react to legislation that could affect the courts. But perhaps the Conference's most remarkable quality is its consistent and overriding commitment to the taxpayers who use the federal courts. For 75 years the Conference has steadfastly focused on its mission to serve as the principal policy-making body concerned with the administration of the U.S. Courts and the administration of justice. Undoubtedly, this goal will remain unchanged for generations to come. 

"During my tenure, we grappled with the agonizing subject of habeas corpus review; we voted on sending an impeachment recommendation to the Congress; and we worried interminably about how to spread too few resources (people and money) across a never-ending expanse of cases. . . . It continues to be a source of gratification and sometimes wonder that in that day and a half twice a year they can do what has to be done to keep the federal courts working. But they must and they do."

Judge Patricia M. Wald (D.C. Cir.) served on the Conference from 1986 to 1991. She was also a member of the Committee on Codes of Conduct, and currently serves on the Committee on Court Administration and Case Management.

**Chief Justice
Warren E. Burger**

Presided 1969-1986



"Chief Justice Burger served with distinction on the federal bench for 30 years, as a judge of the United States Court of Appeals for the District of Columbia Circuit from 1956 to 1969 and as Chief Justice of the United States from 1969 to 1986, during which time he served as Presiding Officer of this Conference. His devotion to the improvement of the administration of justice was legendary, and he left a legacy of administrative reforms from which we benefit. Upon his retirement in 1986, Burger tirelessly and diligently led the nation in observing the 200th anniversary of the Constitution, playing a pivotal role in educating and inspiring younger generations to revere the Constitution as a treasured inheritance to be protected and preserved.

His reputation as a jurist, a scholar, and an esteemed colleague will be forever a part of the history of this Conference and a grateful nation."

*From a 1995 resolution
by the Judicial Conference*

JUDICIAL CONFERENCE OF THE UNITED STATES

September 1997

Chief Justice William H. Rehnquist, Presiding

Chief Judge Juan R. Torruella	First Circuit
Chief Judge Joseph L. Tauro	District of Massachusetts

Chief Judge Ralph K. Winter, Jr.	Second Circuit
Chief Judge Peter C. Dorsey	District of Connecticut

Chief Judge Dolores K. Sloviter	Third Circuit
Chief Judge Edward N. Cahn	Eastern District of Pennsylvania

Chief Judge J. Harvie Wilkinson III	Fourth Circuit
Judge W. Earl Britt	Eastern District of North Carolina

Chief Judge Henry A. Politz	Fifth Circuit
Judge William H. Barbour, Jr.	Southern District of Mississippi

Chief Judge Boyce F. Martin, Jr.	Sixth Circuit
Judge Thomas A. Wiseman, Jr.	Middle District of Tennessee

Chief Judge Richard A. Posner	Seventh Circuit
Chief Judge Michael M. Mihm	Central District of Illinois

Chief Judge Richard S. Arnold	Eighth Circuit
Judge Donald E. O'Brien	Northern District of Iowa

Chief Judge Procter Hug, Jr.	Ninth Circuit
Chief Judge Lloyd D. George	District of Nevada

Chief Judge Stephanie K. Seymour	Tenth Circuit
Judge Clarence A. Brimmer	District of Wyoming

Chief Judge Joseph W. Hatchett	Eleventh Circuit
Judge Wm. Terrell Hodges	Middle District of Florida

Chief Judge Harry T. Edwards	District of Columbia Circuit
Chief Judge Norma H. Johnson	District of Columbia

Chief Judge Glenn L. Archer, Jr.	Federal Circuit
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Chief Judge Gregory W. Carman	Court of International Trade
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Conference Secretary:
Leonidas Ralph Mecham, Director
Administrative Office of U.S. Courts



Judicial Conference of the United States

28 U.S. C. § 331



The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of International Trade, and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference, which shall be known as the Judicial Conference of the United States. Special sessions of the Conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit and shall serve as a member of the Judicial Conference of the United States for a term of not less than 3 successive years nor more than 5 successive years, as established by majority vote of all circuit and district judges of the circuit. A district judge serving as a member of the Judicial Conference may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title.

If the chief judge of any circuit, the chief judge of the Court of International Trade, or the district judge chosen by judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit or any other judge of the Court of International Trade, as the case may be. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the Conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The Conference shall make a comprehensive survey of the conditions of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in section 372 of this title as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review shall be reviewed by that committee. The Conference or standing committee may hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the Supreme Court or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the court, and shall be served in the manner provided in rule 45 of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or any agency thereof. The Conference may also prescribe and modify rules for the exercise of the authority provided in section 372 of this title. All judicial officers and employees of the United States shall promptly carry into effect all orders of the Judicial Conference or the standing committee established pursuant to this section.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Judicial Conference shall review rules prescribed under section 2071 of this title by the courts, other than the Supreme Court and the district courts, for consistency with Federal law. The Judicial Conference may modify or abrogate any such rule so reviewed found inconsistent in the course of such a review.

The Attorney General shall, upon request of the Chief Justice, report to such Conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

Leonidas Ralph Mecham on the Judicial Conference

"During my 12 years as Director of the Administrative Office, one of the truly great privileges I have enjoyed is my role as Secretary to the Judicial Conference of the United States. In the 24 Conference sessions and countless committee meetings I have attended, I have witnessed profound changes in the Judiciary. Fortunately the steady hand and keen insight of the Conference has helped the court system cope with explosive caseloads, unprecedented resource needs, as well as the occasional bump in the road.

Of course the men and women who serve on the Conference are the real foundation, as are those who have volunteered to participate through Conference committees while continuing to carry out their regular judicial duties. During my tenure, numerous judges have had a hand in the development and implementation of policies that impact the administration of courts nationwide. They have exhibited tremendous commitment to the betterment of the courts.

I also am pleased to have overseen great changes in the role the AO has played in support of the Conference. As counsel and advisors to Conference committees, AO staff perform valuable substantive work that assists committees to formulate recommendations for the Conference.

The Judicial Conference is a unique entity in our system of government. Its success and endurance are a tribute to the many fine men and women who have served on the Conference and its committees."



AO Director Leonidas Ralph Mecham.

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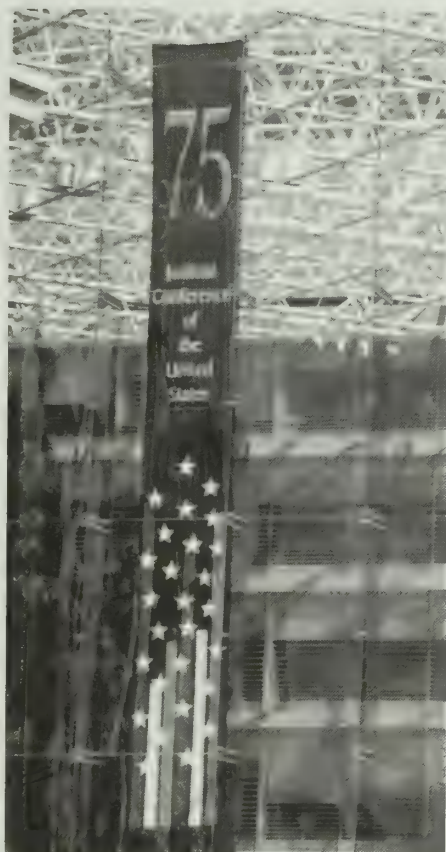
Judicial Conference Endorses Cost of Living Salary Adjustment for All Government Leaders

At its biannual meeting last month, the Judicial Conference celebrated its 75th Anniversary and announced its support for a cost-of-living salary adjustment for federal judges, members of Congress, and top officials in the executive branch. Voting on a resolution offered from the floor during the meeting, the Conference said that "such an adjustment to the compensation of these officials is necessary to protect them from increases in the cost of living that have occurred since their last such adjustment in January 1993." The vote occurred at a time when Congress has been criticized in the press for approving a COLA for its members.

The resolution was offered by Judge Wm. Terrell Hodges (M.D. Fla.), chairman of the Conference Executive Committee, following a report by Judge Barefoot Sanders (N.D. Tex.), chairman of the Conference Committee on the Judicial Branch.

The salary of leaders in the three branches of the federal government

See Conference on page 2



Banners celebrating the 75th Anniversary of the Judicial Conference hang in the atrium of the Thurgood Marshall Federal Judiciary Building. Approximately 40 feet long, the hand-appliqued banners were designed by AO staff.

Judiciary Budget and Judges' COLA On Hold

A House-Senate conference this month will not only set the Judiciary's fiscal year 1998 budget, but also will determine the fate of a cost-of-living adjustment (COLA) for federal judges, as well as the possibility of the repeal of section 140 of P.L. 97-92. The November issue of *The Third Branch* will discuss the resolution of these issues in detail.

On October 5, the Treasury, Postal Service and General Government Appropriations bill for FY98 was sent to President Clinton for his signature. Unlike the past four years, this bill does not deny a COLA to members of Congress, judges and Executive Schedule employees. However, this bill does not contain an affirmative action to give judges a COLA in FY98, which is required by section 140 of P.L. 97-92. It is anticipated that the Commerce, Justice, State, the Judiciary, and Related Agencies funding bill, which is expected to be taken up by conferees in October, will include this affirmative action by Congress to provide a COLA for judges.

FY98 began without an appropriations bill for the Judiciary

See COLA on page 4

INSIDE	Bill Signed to Extend Temporary Judgeships	pg. 5
	Hearing Held on Bankruptcy Judgeships	pg. 6
	Vacancy Crisis Debated	pg. 12

has been frozen for four years, and as a result, their compensation in real dollars has declined 12.2 percent. During the same period, rank-and-file federal employees received cost-of-living adjustments totaling nearly 13 percent. The result is that in 1992 dollars, the salary of a district court judge has fallen approximately \$15,000.

Although the Judicial Conference is on record supporting a COLA for leaders of all three branches, should this not occur, the Conference urges that Congress strongly consider the special circumstances facing judges. Unlike most members of Congress and all cabinet members, virtually all federal judges make a lifetime commitment and work for many years after other government leaders have retired. If the erosion in the value of federal judicial salaries continues, the compensation rates will fall below the minimum level needed to attract and retain judges of the highest caliber.

Earlier this year the Conference unanimously endorsed a catch-up pay adjustment of approximately 9.6 percent to cover four lost years; the delinkage of judges' pay from Executive Schedule and congressional pay, and linkage instead to General Schedule employees; and the repeal of Section 140 of P.L. 97-92, which requires special congressional action for judicial salaries to increase, unlike the automatic COLAs for Congress.

In other action, the Conference

■ In response to an American Bar Association proposal, agreed to study the desirability, feasibility, and cost of establishing a centrally maintained, publicly accessible electronic database of all opinions submitted by federal courts. The Conference declined at this time to adopt the ABA's proposal for state and federal courts to develop a standard, format-neutral case citation system and also declined to recom-

mend at this time the format they can use. The Conference Committee on Automation and Technology and Subcommittee on Policy and Programs have thoroughly studied the issue, having held a public hearing, conducted a survey of federal judges, and received and analyzed more than 600 comments from the public.

■ Reaffirmed its long-standing position that federal criminal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts. The Conference position is particularly applicable to the prosecution of juveniles.

■ Reiterated its opposition to certain provisions in H.R. 1252, the Judicial Reform Act of 1997. Specifically, the Conference expressed its opposition to parts of the bill that would allow for a peremptory strike of a judge in a civil action; require the random assignment of habeas corpus cases; and allow the presiding judge in appellate cases to let the media have camera access.

■ Delegated to the Director of the Administrative Office authority to grant waivers of miscellaneous fees, excluding filing fees, following a natural disaster, for a set period of time not to exceed one year. The waiver would be considered upon the request of the chief judge of the affected court. Most recently, during spring flooding in North Dakota, law firms lost all their court files. They were granted a 90-day waiver of copying fees for those lawyers who needed to reconstruct their files in pending cases.

■ Authorized the use of digital audio recording equipment as a method of recording court proceedings for the limited purpose of studying its use. The one-year study will occur in a minimum of two district, two magistrate, and two bankruptcy court-

rooms. Digital audio recording is a computer-based system that allows proceedings to be stored and retrieved through a computer that requires specialized hardware and software. Digital audio recording may have several potential benefits, including enhanced sound quality; immediate and remote access to segments of the record; savings in storage space; and the potential for simultaneous recording, playback, note taking, and transcribing capabilities for users.

■ Approved proposed new Civil Rule 23(f) for transmission to the Supreme Court for its consideration with the recommendation that it be adopted. New subdivision (f) would create an opportunity for interlocutory appeal from an order granting or denying class action certification. The decision whether to permit appeal is the sole discretion of the court of appeals. Application for appeal must be made within 10 days after entry of the order.

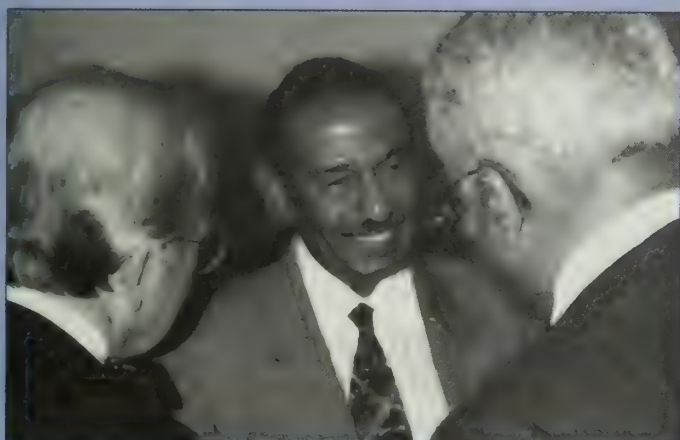
■ Submitted to the President a slate of names for consideration for either appointment or reappointment to the U.S. Sentencing Commission. The governing statute provides that at least three of the members shall be federal judges selected after a consideration of judges recommended to the President by the Conference. The statute also states that not more than four of the members shall be of the same political party. The terms of three members are due to expire on October 31, 1997. Three other seats on the seven-member Commission already are vacant. At its meeting today, the Conference recommended Judge A. David Mazzone (D. Mass.), a former commissioner, for reappointment and submitted to the President for consideration for appointment the names of Judges Peter Beer (E.D. La.), John C. Coughenour (W.D. Wash.), William Enright (S.D. Cal.), Diana E. Murphy (8th Cir.), Donald E. O'Brien (N.D. Iowa), and Gerald E. Rosen (E.D. Mich.).

Rumpole of the Bailey Meets the Judicial Conference

The Judicial Conference celebrated its 75th anniversary with a dinner featuring noted British author, John Mortimer. Mortimer is best known in the United States for his *Rumpole of the Bailey* stories. The fictional Rumpole is an often irreverent barrister of the Old Bailey. The author Mortimer is a former Queen's Counsel. The author shares with the character Rumpole a colorful perspective on the legal arena. The dinner was attended by members of the Judicial Conference, committee chairs, and members of Congress.



Photo left to right, Chief Justice William H. Rehnquist, Chief Judge Richard S. Arnold (8th Cir.), and author John Mortimer and his wife, Penelope.



Judge W. Earl Britt (E.D. N.C.) (photo left, back to camera), Representative John Conyers Jr. (R-MI), and Judge John Garrett Penn (D.D.C.) (photo right, back to camera).



Photo left to right, Judge Barefoot Sanders (N.D. Tex.), Judge Norman Stahl (1st Cir.), and Chief Judge Boyce F. Martin (6th Cir.).



Photo left to right, Chief Judge Henry A. Politz (5th Cir.), Chief Judge Procter Hug Jr. (9th Cir.), and Judge Ann C. Williams (N. D. Ill.).

Hearings on Judgeship Allocations Continue

Senator Charles E. Grassley (R-IA) continued his examination of judgeship allocations in the federal courts with a hearing last month focusing on the 2nd and 8th Circuits. The fourth hearing in a series, Grassley previously has examined the 4th, 5th, 11th, and D.C. Circuits.

In remarks opening the hearing, Grassley said, "If there's one fact that is undeniable it's that the federal Judiciary is deeply divided over the prospect of growth." Describing the Judiciary as a "large bureaucracy that has been on a one-way glide-path to growth," Grassley credited his hearings with changing Judicial Conference policies governing judgeship allocations and filling vacancies. "Until recently," said Grassley, "the Judicial Conference only looked at whether a court needed more judges. After this subcommittee's efforts and input, the Conference has finally agreed to



Testifying on the allocation of judgeships in the 2nd and 8th Circuits were, photo left to right, Chief Judge Richard S. Arnold (8th Cir.), Chief Judge Ralph K. Winter (2nd Cir.), Judge Jon O. Newman (2nd Cir.), and Judge Lawrence L. Piersol (D. S.D.).

look at whether courts can do their job with less judges. This is a profound change in attitude, and I'm very happy to be a part of it."

Testifying before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts were Chief Judge Richard S. Arnold

COLA continued from page 1
when on September 30 Congress passed a continuing resolution to continue funding for government agencies at FY97 levels until October 23, 1997.

The House version of the Commerce, Justice, and State appropriations bill, H.R. 2267, gives the Judiciary a 9.3 percent increase in overall obligations. The House bill is silent on any pay adjustment for judges.

The Senate version of the appropriations bill gives the Judiciary a 9.7 percent increase in overall obligations, and contains a provision (section 306) that takes the affirmative action required by section 140 to give judges a 2.3 percent cost-of-living adjustment for FY98.

Administrative Office Director Leonidas Ralph Mecham and Budget Committee Chair Judge John Heyburn (W.D. Ky.) are keeping members of Congress aware of the Judiciary's FY98 funding needs. At the same time, Chief Justice William H. Rehnquist, Judicial Branch Committee Chair Judge Barefoot Sanders (N.D. Tex.), and Mecham are urging Congress to give judges their first COLA in four years.

Conferees received a letter from the Chief Justice urging them to include a COLA for judges in the appropriations bill. "I strongly encourage you to either agree to section 306 or preferably to repeal section 140 altogether," the Chief Justice wrote. "Repeal of section

140 would restore parity with the other two branches of government, as intended under the Ethics Reform Act. This would have the salutary effect of making judges eligible for the same automatic COLAs as Members of Congress and top executive branch officials."

Enactment of this bill may be delayed because of a disagreement between Congress and the President over the use of statistical sampling in the nation's upcoming census. The President has threatened to veto any bill that blocks use of the sampling technique. Unfortunately, Judiciary funding and a judges' COLA will be held hostage until this disagreement is resolved.

(8th Cir.), Chief Judge Ralph K. Winter (2nd Cir.), Judge Jon O. Newman (2nd Cir.), and Judge Lawrence L. Piersol (D. S.D.).

Arnold, speaking for the 8th Circuit, told the subcommittee that the existing vacancy on the 8th Circuit and the four existing vacancies on the district courts in the circuit should be filled, but that no new circuit judgeships should be created in the circuit. Arnold cited a steadily increasing caseload and the largest backlog of cases in the circuit's history as reasons to fill the circuit judge vacancy.

In his testimony, Winter noted that the 2nd Circuit has one of the shortest median disposition times from notice of appeal to decision, and yet workload is exceeding what can be handled without harming quality. "It is my judgment—and one that I believe is shared by my colleagues—that the active judges of the court cannot undertake a permanent increase in workload without diminishing the quality of the court's decision-making," said Winter. He presented the subcommittee with a 12-month schedule of panels, showing that 41 percent of the panels will have less than three judges assigned. If the vacancies remain unfilled, those spots must be filled by visiting judges.

Newman endorsed Winter's remarks. Although concerned that unchecked growth in the Judiciary will affect quality, efficiency, and thoroughness, he said, "As long as Congress requires the federal courts to dispose of an ever-increasing volume of cases within federal jurisdiction, there will be a justifiable need to add more judgeships." Newman suggested several steps Congress could take to reduce the caseload, including limiting new federal causes of action and crimes, reallocating federal cases to state courts

through discretionary access, and using two-judge appellate panels.

Piersol encouraged Congress to fill vacancies in the district courts of the 8th Circuit. He also expressed concerns with the confirmation process, saying that "the uncertainty as well as the wait wreaks havoc with clients, the practice in general, and your family. With the uncertainty as well as the delays that now face some of those that are well qualified and eager to enter into this fine public service, I am concerned

that these positions in some instances may not be sought after by as many of the best candidates as has been the case in the past."

Although Grassley has said some courts have too many judges, he has acknowledged that "some courts could actually use some help." Grassley had introduced S. 1113, a bill to extend certain temporary district court judgeships. However, S. 996, a bill containing a similar provision, was enacted this month. (See story below.)

Arbitration Bill Extends Temporary Judgeships

On October 6, 1997, the President signed S. 996 into law as P.L. 105-53. It provides for the permanent reauthorization of the 20 court pilot arbitration programs established by P.L. No. 100-702. It also transfers a judgeship from the Eastern District of Louisiana to the Middle District of Louisiana.

P.L. 105-53 also contains provisions extending certain temporary judgeships created by P.L. 101-650, except in the Western District of Michigan and the Eastern District of Pennsylvania. In 1990, P.L. 101-650 fixed expiration dates for certain judgeships. Vacancies now are beginning to occur in the districts with these temporary judgeships and in several of these districts the caseload justifies extending the period of the temporary judgeship. Without an extension, these judgeships would be lost when the next vacancy occurs. With the signing of the bill, the first

vacancy in the district occurring 10 years or more after the confirmation date of the judge named to fill the temporary judgeship shall not be filled. However, in the Eastern District of Pennsylvania, the first vacancy in the office of district judge occurring 5 years or more after the confirmation date of the judge named to fill the temporary judgeship shall not be filled. The temporary judgeship in the Western District of Michigan has already lapsed.

The districts with temporary judgeships receiving extensions are the Eastern District of California, the District of Hawaii, the District of Kansas, the Central District of Illinois, the Southern District of Illinois, the Eastern District of Missouri, the District of Nebraska, the Northern District of New York, the Northern District of Ohio, and the Eastern District of Virginia.

Caseload Growth Supports Need for New Bankruptcy Judgeships

The chair of the Judicial Conference Committee on the Administration of the Bankruptcy System told a Senate subcommittee last month that sustained high growth in bankruptcy caseloads in certain judicial districts requires the creation of 18 bankruptcy judgeships.

"A request for additional judicial resources is made only after a pattern of need demonstrates the judicial caseload cannot be administered by other methods, such as utilization of more efficient and effective case management procedures, assistance from other districts or circuits, expansion of automation programs, and additional supporting personnel," said Judge David R. Thompson (9th Cir.), chair of the Judicial Conference Committee on the Administration of the Bankruptcy System. As a result, he added, each of the districts currently requesting a new bankruptcy judgeship has experienced over a sustained period of time a caseload that its current judges are unable to administer and adjudicate. Thompson testified before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts.

The Judicial Conference has recommended that 11 of the 18 new judgeships be temporary, which creates the position for a minimum of five years. On July 28, 1997, the House passed H.R. 1596, which would establish the 18 new bankruptcy judgeships. New bankruptcy judgeships were created last in 1992, when Congress authorized 35 positions.

In 1996, for the first time in history, the number of bankruptcy petitions filed in a single year topped 1 million. The record was followed by two more—the number



Senator Charles E. Grassley greets Judge David R. Thompson, chair of the Judicial Conference Committee on the Administration of the Bankruptcy System before the hearing on bankruptcy judgeships.

of petitions filed in the first quarter of 1997 (335,073) was the highest quarterly total ever, until it was topped by the number filed in the second quarter (367,168).

Senator Charles E. Grassley (R-IA), the chair of the subcommittee, in a September 11 statement and at the hearing, questioned whether Congress should create new bankruptcy judges. He cited a GAO report, which he commissioned, that, he said, "reveals that some of those districts requesting new judgeships spend far too much time traveling for non-case related reasons." According to the GAO report, 67 percent of non-case related travel by bankruptcy judges in 1996 was for purposes such as circuit or district meetings and activities, Judicial Conference meetings, and for workshops, seminars, and

other activities sponsored by the AO or Federal Judicial Center. "One can conclude," said Grassley, "that some of the bankruptcy districts which are requesting more judgeships are doing so without making meaningful efforts to rein in travel to enable current judges to improve their productivity."

In his testimony, Thompson addressed Grassley's concerns. "Your long record of seeking efficiencies and reduced costs is an enviable one," Thompson said. "The sincerity of your efforts and the integrity of your motives are without question." Thompson told the subcommittee that judges' participation in continuing education, training, and the administration of the bankruptcy system are all an integral part of the duties of the office.

PLEASE POST

VACANCY ANNOUNCEMENTS THE THIRD BRANCH

Vol. 29 Number 10 October 1997

DIRECTOR OF RESEARCH, Federal Judicial Center

The Federal Judicial Center, which performs research and education functions for the Judiciary, seeks to fill the position of director of its Research Division. Applicants must have a law degree or graduate degree in social sciences. Desirable qualifications include: (1) at least ten years of increasingly responsible professional experience in a research environment; (2) a record of scholarship, preferably in the fields of federal courts and the judicial process; (3) familiarity with quantitative research methods; (4) experience with structure and operation of the federal judicial system; and (5) demonstrated management ability. Salary in 1997 is \$115,893. All federal government benefits are applicable. The Center does not pay relocation expenses. A copy of the full announcement is available at www.fjc.gov, or by e-mail to personnel@fjc.gov. Applicants must send a letter explaining their qualifications along with a resume to the FJC, Attn: Personnel Office (Announcement #97-20), Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, D. C. 20002-8003. **The position remains open until filled.**

BANKRUPTCY JUDGESHIP, Eastern District of Kentucky at Lexington

Bankruptcy Judge position available. Appointment is for 14-year term. Salary: \$122,912. Full public notice with qualification standards is posted in the offices of the Clerk of the United States Court of Appeals for the Sixth Circuit and U.S. District and Bankruptcy Courts for the Eastern District of Kentucky. For further information and application forms, contact the Office of the Circuit Executive, U.S. Court of Appeals for the Sixth Circuit, 503 Potter Stewart United States Courthouse, Cincinnati, Ohio 45202-3988, (513) 564-7200. Deadline for receipt of applications is **December 1, 1997**.

FEDERAL PUBLIC DEFENDER, Western District of Michigan at Grand Rapids

Federal Public Defender position available. Appointment is for 4-year term. Salary: 95 percent of the salary of the United States attorney or the same as the salary of the highest paid assistant United States attorney for the district, currently \$110,365. Full public notice with qualification standards is posted in the office of the Clerk of the United States Court of Appeals for the Sixth Circuit and the offices of the Clerk of the United States District Court for the Western District of Michigan. For further information and application forms, contact the office of the Circuit Executive, U.S. Court of Appeals for the Sixth Circuit, 503 Potter Stewart United States Courthouse, Cincinnati, Ohio 45202-3988, (513) 564-7200. Deadline for receipt of applications is **November 15, 1997**.

MAGISTRATE JUDGE, Western District of Kentucky

Applications are being accepted for a full-time Magistrate Judge for the United States District Court for the Western District of Kentucky. The duty station will be located at Owensboro, Kentucky. Minimum qualifications include an active law practice for at least five years, bar membership in good standing for five years, and no blood or marriage relationship to a judge of this court. The current salary is \$122,912; term of office is eight years. Further information and application forms may be obtained from Human Resources, U.S. District Court, Room 450, 601 W. Broadway, Louisville, Kentucky 40202, or by calling 502-582-5156 Ext. 446. Application deadline is **December 1, 1997**.

BANKRUPTCY JUDGESHIP, District of Idaho

The U.S. Court of Appeals for the Ninth Circuit invites applications from highly-qualified candidates for the position of Bankruptcy Judge for the District of Idaho. Chambers for this position will be located in Boise. This position is expected to be filled in August 1998. Term of office: 14 years. Salary: \$122,912 per annum. Basic qualifications for consideration include: (1) admission to practice before the highest court of at least one state or the District of Columbia; (2) membership in good standing in every bar in which membership is held; and (3) at least five years of legal practice experience. Application forms may be obtained from the Office of the Circuit Executive, P. O. Box 193939, San Francisco, California 94119-3939, telephone: (415) 556-6100. Fax: (415) 556-6179, or from the website at www.ce9.uscourts.gov. Deadline for receipt of all completed application materials: **5 p.m. PT — November 14, 1997**.

CALENDAR DATES FOR
THE THIRD BRANCH

Vol. 29 Number 10 October 1997

- 6-7 Monday-Tuesday**
Advisory Committee on Civil Rules
- 13-14 Monday-Tuesday**
Advisory Committee on Criminal Rules
- 20-21 Monday-Tuesday**
Advisory Committee on Evidence Rules
- 20-21 Monday-Tuesday**
Committee on Intercircuit Assignments
- 22-24 Wednesday-Friday**
Tenth Circuit Judges-Only Conference
- 27-31 Monday-Friday**
Orientation Seminar for New Magistrate Judges

OCTOBER

NOVEMBER

- 14-15 Friday-Saturday**
Workshop for Court of Federal Claims Judges and Special Masters

"These and many other activities that take place outside the bankruptcy court are every bit as important to the delivery of justice as what happens inside the courtroom," Thompson said. "The variety of issues which come before any bankruptcy court today is extensive and expanding. . . . A bankruptcy judge who does not have sufficient working knowledge of these issues cannot effectively adjudicate related disputes or settle claims regarding these matters."

Thompson continued, "The cost to society of an over-burdened bankruptcy system is enormous in many respects . . . much more than the cost of the additional judges." He added, "Delays for court time and other judicial access becomes inevitable . . . and often assets available for creditors dissipate, proceedings become fragmented, professional fees increase, and circuit resources are not used efficiently." Thompson stated, "I sincerely request your assistance in authorizing these desperately needed new judgeships."

Grassley has urged the Judiciary to build more accountability for travel by judges into the system. The Judicial Conference Committee on the Judicial Branch and the Committee on the Administration of the Bankruptcy System are studying the travel regulations for all judicial officers.

As he has in the past for bankruptcy judges, Grassley also has asked that GAO obtain travel information on Article III judges. The information being collected is from each of the five appellate courts and 23 district courts that have judgeship requests pending before Congress, as well as the 20 appellate and district courts that have or have had judgeship vacancies for 18 months or longer since January 1, 1995.

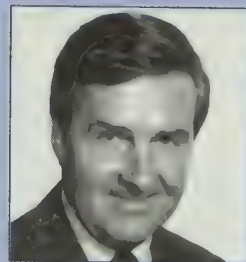
Conference Committee Chairs Assigned

Five new Judicial Conference committee chairs began their tenure this fall, while the terms of two committee chairs have been extended. Chief Justice William H. Rehnquist appointed the following judges as chairs:

Judge Edward W. Nottingham (D. Colo.) succeeds Judge J. Owen Forrester (N.D. Ga.) as chair of the Committee on Automation and Technology. Judge Will L. Garwood (5th Cir.) succeeds Judge James K. Logan (10th Cir.) as chair of the Advisory Committee on Appellate Rules. Judge W. Eugene Davis (5th Cir.) succeeds Judge D. Lowell Jensen (N.D. Cal.) as chair of the Advisory Committee on Criminal Rules. Judge David R. Hansen (8th Cir.) will succeed Judge Barefoot Sanders (N.D. Tex.) as chair of the Committee on the Judicial Branch. Chief Judge D. Brock Hornby (D. Me.) succeeds Judge Ann C. Williams (N.D. Ill.) as chair of the Committee on Court Administration and Case Management. The chairs begin their terms October 1, 1997, with the exception of Hansen, whose tenure begins at the end of the first session of the 105th Congress.

The Chief Justice has extended by two years Judge William J. Bauer's (7th Cir.) term as chair of the Committee to Review Circuit Council Conduct and Disability Orders. Chief Judge Julia S. Gibbons (W.D. Tenn.) will remain as chair of the Committee on Judicial Resources for another year.

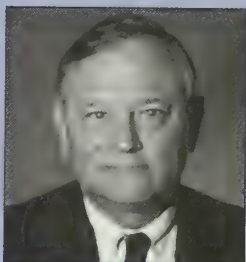
The Chief Justice makes all appointments to the Judicial Conference committees and determines tenure. Generally, however, committee terms, except on the Executive, Judicial Branch, and Budget Committees, are for three years, with one reappointment possible. Five to six years of cumulative committee service, including past committee assignments, is considered the maximum a member may serve.



Judge Edward W. Nottingham (D. Colo.)



Judge Will L. Garwood (5th Cir.)



Judge W. Eugene Davis (5th Cir.)



Judge David R. Hansen (8th Cir.)



Chief Judge D. Brock Hornby (D. Me.)

JUDICIAL MILESTONES

Appointed: Eric L. Clay, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Sixth Circuit, August 15.

Appointed: Arthur J. Gajarsa, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Federal Circuit, September 12.

Appointed: Alan Stephen Gold, as U.S. District Judge, U.S. District Court for the Southern District of Florida, July 28.

Appointed: Ann I. Jones, as U.S. Magistrate Judge, U.S. District Court for the Central District of California, July 28.

Appointed: Thomas W. Thrash, Jr., as U.S. District Judge, U.S. District Court for the Northern District of Georgia, August 15.

Elevated: Judge John C. Coughenour, to Chief Judge, U.S. District Court for the Western District of Washington, succeeding Chief Judge Carolyn R. Dimmick, September 1.

Senior Status: Judge Cynthia Holcomb Hall, U.S. Court of Appeals for the Ninth Circuit, August 31.

Senior Status: Judge H. Franklin Waters, U.S. District Court for the Western District of Arkansas, August 1.

Retired: Senior Judge Stanley A. Weigel, U.S. District Court for the Northern District of California, September 30.

Deceased: Senior Judge Norman W. Black, U.S. District Court for the Southern District of Texas, July 23.

Deceased: Senior Judge Edward D. Dumbauld, U.S. District Court for the Western District of Pennsylvania, September 6.



Members of the Judicial Conference Executive Committee and chairs of Conference committees met prior to the September 1997 session of the Conference to discuss pending issues of interest to the Judiciary.

THIRD BRANCH

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Please direct all inquiries and address
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above address.

JUDICIAL BOXSCORE

As of October 1, 1997

Courts of Appeals		
Vacancies		24
Nominees		11
District Courts		
Vacancies		69
Nominees		40
Court of International Trade		
Vacancies		2
Nominees		0
Courts with "Judicial Emergencies"		
		28

Judicial Fellows Selected for 1997-98



David Pimentel



Harry Pohlman



Robert Clayman

The newly selected Judicial Fellows for 1997-98 are Robert Clayman, David Pimentel, and Harry Pohlman. The Judicial Fellows Program, established in 1973 by Chief Justice Warren Burger, is designed to give outstanding individuals the opportunity to study the administration of the federal Judiciary and interbranch relations. Beginning in August or September, fellows spend one year at the Supreme Court, the Federal Judicial Center, the Administrative Office, or the U.S. Sentencing Commission.

The 13-member Judicial Fellows Commission selects fellows based on their energy, motivation, and multi-disciplinary experience, as well as their interest in improving aspects of the federal judicial process. All fellows must be familiar with the judicial system, have at least one postgraduate degree, and have two or more years of exemplary professional experience.

David Pimentel is the Judicial Fellow at the Administrative Office. He previously served as the Assistant Circuit Executive for Legal Affairs at the U.S. Court of

Appeals for the Ninth Circuit. He also has been an attorney at Perkins Coie in Seattle, Washington, and a law clerk for Judge Martin Pence (D. Hawaii). After graduating summa cum laude from Brigham Young University in 1984, Pimentel attended Boalt Hall School of Law and Harvard University Law School to earn his law degree. He also holds a master's degree in economics from the University of California at Berkeley. He is a member of the California Law Review and received the American Jurisprudence Award in English Legal History.

Harry Pohlman is the Judicial Fellow at the Supreme Court. He is a professor of political science at Dickinson College in Carlisle, Pennsylvania. He has been honored with many awards and grants, including a 1989 Henry M. Phillips Research Grant in Jurisprudence from the American Philosophical Society. Pohlman graduated cum laude from the University of Dayton in 1974 and went on to earn a doctoral degree in political science from Columbia University. His publications focus on such topics as law and constitu-

tional theory, and include two books on Justice Oliver Wendell Holmes. His most recent publication is a three-volume set entitled *Constitutional Debate in Action*.

Robert Clayman is the fellow at the Federal Judicial Center. He was the first executive director of the Massachusetts Judicial Institute. A former instructor at Tufts University, he currently teaches at Northeastern University's Graduate School of Criminal Justice and is a member of the National Institute for Faculty Excellence in Judicial Education. After graduating with honors from American University in 1976, he received his master's degree in education from Tufts University in Medford, Massachusetts, and his law degree from Boston University School of Law. Clayman has served in several positions within the Massachusetts court system, where he helped to develop various educational and improvement initiatives. He has published several works, the most recent of which is *The Excellent Judge Educator: Agent of Change — Creating a State of Mind and Living the Change*.

A Judicial Perspective on Bankruptcy

Judge David R. Thompson was appointed to the Ninth Circuit in 1985. He is the chair of the Judicial Conference Committee on the Administration of the Bankruptcy System.

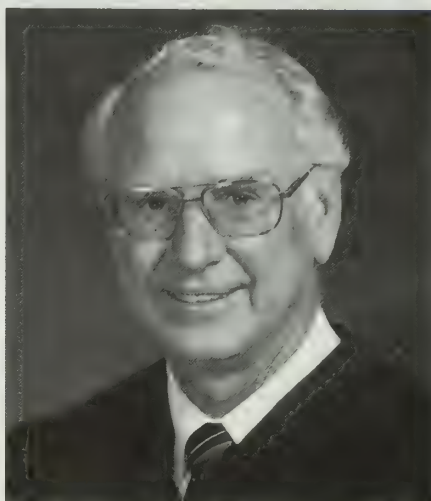
Q: With filings at record levels, "bankruptcy" has become a familiar word in today's society. Will the current levels continue?

A: I think they will increase. In 1996, for the first time in history, the number of bankruptcy petitions filed in a one-year period exceeded one million. This record was soon followed by two more when the first quarter filings for 1997—335,135—exceeded the previous number of cases ever filed in one quarter, and filings in the second quarter of 1997—367,168—were even higher. The Administrative Office projects that total bankruptcy filings for fiscal year 1997 will be 1,350,000.

Many wonder why we are seeing so many bankruptcies. Generally, there is no one single reason or cause. A number of triggering events are cited, such as unanticipated medical expenses combined with the lack of health care insurance, the stagnation of real wages over the past 20 years, the debt-to-income ratio with abuse of credit cards, and financial illiteracy. Corporate downsizing is another factor, as millions of workers have lost their jobs and those who have been re-employed often have had to take jobs at significantly lower salaries.

Q: How are the bankruptcy courts managing the unprecedented number of bankruptcy filings?

A: The efforts and management skills of bankruptcy judges throughout the country have made it



Judge David R. Thompson

possible for the system to continue to operate thus far in spite of the growing caseloads. The willingness of judges to hold hearings on nights and weekends has made it possible for the courts to run smoothly.

The Judicial Conference—with assistance from the Bankruptcy Committee and the circuits—has used a variety of management tools to maximize the use of judicial resources. These tools include the use of temporary judgeship positions, recalled judges, shared positions, cross-designation of judges, and intercircuit and intracircuit assignments.

Credit must also be given to the clerks of the bankruptcy courts, who have developed more effective and innovative procedures, employed automation to streamline their operations, and improved their support to chambers.

Q: Are there any special innovations that have impressed you?

A: The Ninth Circuit's bankruptcy workload equalization program is one example of an innovative pilot program designed to cope

with increasing judicial workloads. The project is designed to balance the disparate bankruptcy caseloads more evenly within the circuit by transferring work in adversary proceedings in Chapter 7 (and eventually Chapter 11) cases to districts with lighter workloads. These proceedings are handled from the assisting judge's chambers, with travel occurring only when required to conduct trials. The number of adversary proceedings being transferred to other districts is increasing and there are plans to expand the program to include assistance to additional courts. If the program continues to be successful, it could be used as a model for possible implementation by other circuits.

The Judiciary also is moving ahead with testing prototype systems for filing pleadings and other documents electronically in the bankruptcy and district courts. This effort is especially critical in the bankruptcy courts, because bankruptcy cases tend to be quite "paper intensive." One of the prototype courts, the bankruptcy court for the Southern District of New York, for example, must manage over 22 million documents. That court now has about 20 active cases on its electronic system. Attorneys file papers with the court over the Internet every day and review the documents filed by others either on their computer screens or after printing them out in their offices. Four more bankruptcy courts will be starting up electronic filing systems by the end of the year.

Q: Are there enough bankruptcy judges?

A: No. Despite the hard work and innovative efforts, there is a limit to what the system can handle.

and how long the bankruptcy judges can continue at their present pace in some districts. To ensure continued quality service and justice to the American people, the Judicial Conference, on recommendation from the Bankruptcy Committee, has requested that Congress create 18 additional bankruptcy judgeships (11 temporary and 7 permanent) in 14 districts. Congress shares the Judiciary's concern that the quality of justice provided by the bankruptcy court system to the public not be diminished.

Q: The National Bankruptcy Review Commission was established by Congress to study the current bankruptcy laws and system and make recommendations for improvements. The Commission's report is due at the end of this month. Will the Bankruptcy Committee and the Judicial Conference address the report's recommendations?

A: Yes. The report submitted by the National Bankruptcy Review Commission on October 20, 1997, will be thoroughly reviewed by the Judicial Conference and its committees. I envision that the Bankruptcy Committee will take the initial role in this effort, but other Conference committees' views and input will be sought.

Although the Commission's report is said to contain over one hundred specific items, I suspect the Judicial Conference will focus its attention on items of direct or primary interest to judicial administration and jurisdiction.

Q: What is the Bankruptcy Committee doing with regard to long-range planning for the bankruptcy court system in the aftermath of publication of the Conference's 1995 *Long Range Plan for the Federal Courts*?

A: The committee has been very active in the long-range planning area. Judge Sue L. Robinson (D. Del.),

who chairs our Subcommittee on Long Range Planning, has provided excellent leadership. She met with other Conference committee long-range planning liaisons on May 15 to discuss issues that cross committee lines—such as those related to mass tort litigation.

Judge Robinson's subcommittee is currently focusing on implementing Recommendation 73 of the Judiciary's Long Range Plan, which calls for expanding and improving the federal courts' information-gathering and collection efforts. This project is a follow-up on the excellent work of the Administrative Office and a special task force over the past year, which helped identify the users of bankruptcy information and specify their present and future needs. The subcommittee will review these needs and address policy issues involved in the collection and dissemination of bankruptcy information.

The project comes at an auspicious time because implementation of electronic case files and other automation projects may enable the bankruptcy courts to give debtors, trustees, creditors, and others prompt electronic access to a substantially wider range of information.

The subcommittee will present a status report and outline future plans for completion of the project at the Bankruptcy Committee's January 1998 meeting.

Q: The Conference has encouraged all courts to examine their systems for delivery of administrative services with a view toward adopting greater efficiencies. What issues have arisen in the past year as courts review delivery of administrative services and how are the Conference and your committee dealing with these issues?

A: The primary issue for the courts has been how to deliver services more efficiently while ensuring that any proposed new adminis-

trative support structures do not result in a diminution of services to the court and the public. To that end, the Court Administration and Case Management Committee and the Bankruptcy Committee addressed underlying issues at their summer meetings and are working together—with input from the circuit judicial councils and others in the Judiciary—to develop guidelines for the courts to ensure compliance with 28 U.S.C. § 156(d). That statutory provision requires prior approval of both the Judicial Conference and Congress before consolidation of district and bankruptcy clerks' offices. I anticipate a unified proposal from the two committees will be presented to the Conference for consideration at its March 1998 session.

Q: The 1994 Reform Act mandated the creation of bankruptcy appellate panels (BAPs) by the circuits. What is the current status regarding the BAPs?

A: The judges in the Ninth Circuit are very satisfied with their BAP, which was established in 1979 and which handled approximately 780 appeals for the year ending June 30, 1997. The First, Second, Sixth, Eighth, Ninth, and Tenth Circuits have established BAPs since July 1996. Over 330 bankruptcy appeals were handled by the BAPs in other circuits for the first year of their operation ending June 30, 1997.

The appeals process has recently been examined by the National Bankruptcy Review Commission, which is expected to recommend that appeals go directly from the bankruptcy court to the court of appeals. If that should be the recommendation of the Commission, and if Congress were to enact it, I believe it could be implemented by using the BAPS as part of the appellate process to hear appeals with the consent of the parties.

Administration, Senate Disagree on Judicial Vacancy "Crisis"

The White House and the Hill are talking about judicial vacancies. Unfortunately, they disagree on the topic.

In his September 27 radio address, President Clinton called the large number of judicial vacancies "a vacancy crisis in our courts that . . . could undermine our courts' ability to fairly administer justice." Senator Orrin Hatch (R-UT), chair of the Senate Judiciary Committee, addressed the President's remarks on the floor of the Senate, denying there was a vacancy crisis. "I think it is unfair and frankly inaccurate to report that the Republican Congress has created a vacancy crisis in our courts," Hatch said.

As of October 1, there were a total of 96 judicial vacancies on the courts of appeals, district courts, and the Court of International Trade. Twenty-eight judicial emergencies, where vacancies have been in existence for 18 months or longer, exist in the courts.

Clinton said that "in federal courthouses across America, almost 100 judges' benches are empty," while Senate confirmations of judges in 1996

were the lowest election year total in over 40 years. Meanwhile, the courts are clogged with a rising number of cases, and an unprecedented number of civil cases are stalled. "Our judges are overloaded and overworked," the President said, "and our justice system is strained to the breaking point." Clinton blamed the vacancy crisis on partisan politics. "Under the pretense of preventing so-called judicial activism, they've taken aim at the very independence our founders sought to protect. . . . This age demands that we work together in bipartisan fashion," he said, and called on the Senate to "fulfill its constitutional duty to fill these vacancies."

Hatch responded, "Now it is also incorrect when we suggest there is a deliberate Republican slowdown of the nominations process." Hatch pointed to delays by the White House in offering nominations. While conceding that the confirmation process of some nominations has taken longer than is customary, Hatch said that has been due to nominees who did not respond fully to the committee's inquiries. "While I appreciate and concur in the President's expression of concern for

the integrity of our courts," said Hatch, "we will all be better served by this administration's renewed commitment to sending up restrained, qualified nominees who respect the essential role that the Senate must play in the confirmation process."

The Senate has confirmed 19 judicial nominees so far in the 105th Congress, ten of them since September 1st. Hatch said that several confirmation hearings were scheduled in the coming weeks and that he would like to move these nominees who are qualified as fast as they can be brought up. Hatch also commended Charles Ruff, White House Counsel, for his work in resolving difficulties and agreed confirmations should not be politicized. "The federal Judiciary can determine what happens in this country for years to come," Hatch said. "It is important that we have people of the utmost integrity and respect for the law and respect for the rule of law, and respect for the role of judging on our federal benches. As long as I am on the Judiciary Committee, I am going to work as hard as I can to see that those are the kinds of people that we get there."

THE THIRD BRANCH

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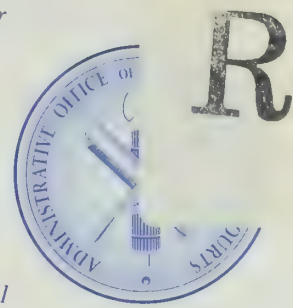
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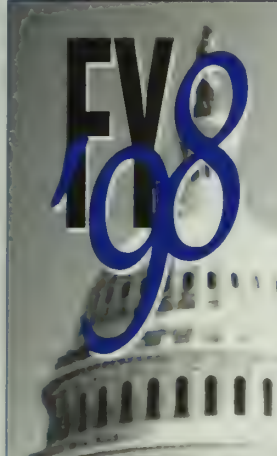
Newsletter
of the
Federal
Courts



Vol. 29
Number 11
November 1997

Congress Adjourns:

Judges Receive First COLA Since 1993



Funding Highlights:

- \$3.88 billion for Judiciary in FY98
- 2.3 percent COLA for judges
- Commission to study appellate structure
- Each state to have representative on circuit court
- Courts to disclose CJA payments

The first session of the 105th Congress adjourned in mid-November amid last minute votes and some hotly debated issues. Its last major legislative act was to pass the Commerce, Justice, State and the Judiciary appropriations bill for fiscal year 1998, also the last of the 13 annual appropriations bills to be sent to the president for his signature. Among other provisions, the conference agreement on the bill contains the affirmative act of Congress required by Section 140 of P.L. 97-92, to provide judges with a 2.3 percent cost of living adjustment (COLA) in FY98. This gives federal

judges their first COLA since 1993. A 2.3 percent COLA for members of Congress and top executive branch officials had been allowed to go into effect earlier.

For FY98, the Judiciary had requested total gross obligational authority of \$3.88 billion. Congress approved total obligational authority of \$3.86 billion, an 11 percent increase over the FY97 level, or 99.5 percent of the Judiciary's FY98 request. Salaries and Expenses will receive an 11.7 percent increase; Defender Services, a 5.4 percent increase; Fees of Jurors, a 4.6 percent

See COLA on page 3

Courthouses Face Possible Disruptions in Maintenance, Services

If there is a chill in northern courtrooms this winter, it may be emanating all the way from Washington, DC. The General Services Administration (GSA) has advised the Administrative Office that building maintenance and services normally provided by GSA could be disrupted due to a funding shortfall. GSA management says the shortfall is the result of downsizing in the federal work force that has reduced rent revenue and a possible \$700 million GSA revenue deficit caused by a GSA miscalculation in its budget projections.

Administrative Office Director Leonidas Ralph Mecham has written to GSA Administrator David J. Barram expressing the Judiciary's deep concerns over what could be significant facilities-related problems in the courts. Mecham said declining GSA levels of senior regional and mid-level staff have weakened GSA's ability to manage construction projects and provide oversight and quality assurance. Mecham told Barram that even though the federal courts will

See Courthouses on page 2

INSIDE	Gallup Poll Puts Judiciary at Top	pg. 7
	Senior Judges Carry Substantial Workload	pg. 9
	Judicial Security is Committee's Key Issue	pg. 10

Congress Looks at Class Action Suits, While Judiciary Studies Rule 23

Proposed changes to Rule 23 of the Federal Rules of Civil Procedure have elicited an "enormous" public response, Judge Paul V. Niemeyer (4th Cir.) told a congressional subcommittee last month. Niemeyer testified that Rule 23, which addresses class actions in federal courts, is "itself at the core of a profound and significant change that is now occurring in civil litigation."

Niemeyer, who serves as the chair of the Judicial Conference Civil Rules Advisory Committee, appeared before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts. The subcommittee is investigating reports of huge attorney fees in class action suits in which consumers receive nominal awards.

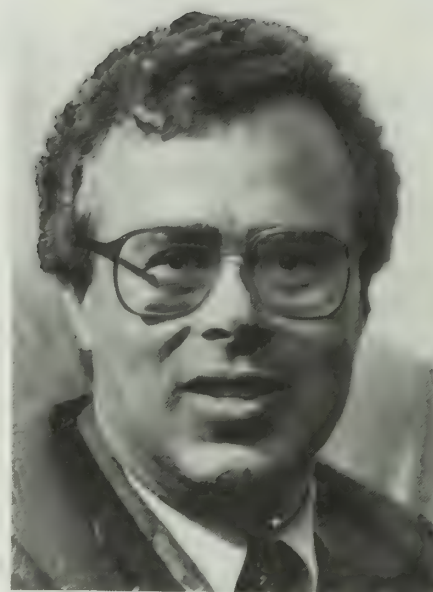
"It is very important that we understand class action lawsuits because they affect so many people," Senator Charles E. Grassley (R-IA) said in opening the hearing. "Plaintiffs band together, increasing their strength through numbers, and rely on a few lawyers to represent the entire class's interests. In some cases, this yields beneficial results. In others, however, the result is less beneficial to

everyone, that is, except for the lawyers."

About six years ago, the Civil Rules Advisory Committee began a study of the problems of class actions.

In August 1996, the Standing Committee on Rules of Practice and Procedure published five proposed changes to Rule 23. In the public hearings that followed, comments were received by the committee from the entire spectrum of experienced users of Rule 23. Niemeyer told the Senate subcommittee that in the public hearings witnesses said that their companies' exposure to class actions had increased 300 percent, 500 percent, and even 1,000 percent over the last three years. Witness testimony before the advisory committee also suggested that Rule 23 is being used in ways never anticipated by the original drafters of the rule to resolve aggregated torts.

Subsequently, the advisory committee and the Standing Committee on Rules endorsed only the addition of a new Rule 23(f) authorizing interlocutory appeals of class action orders, which was approved by the Judicial Conference, and, if approved by the Supreme Court, will be for-



Judge Paul V. Niemeyer (4th Cir.)

warded to Congress by May 1, 1998. Changes to Rule 23(b)(3)(A) and (B) were abandoned, and further study will be made of the remaining proposed changes governing class action settlements and limiting inappropriate class action filings. In the House, Representative Charles T. Canady (R-FL) has introduced H.R. 660, a bill mirroring the Conference's proposed amendment on interlocutory appeal of class action certifications, and H.R. 1252, Representative Henry J. Hyde's (R-IL) Judicial Reform Act of 1997, also contains the same provision. In the Senate, Senator Herb Kohl (D-WI) has introduced a bill requiring notification of state attorneys general of the filing of any class action.

Courthouses continued from page 1

provide in excess of \$575 million in rental payments to GSA in FY98—which by GSA's estimates is about \$115 million in excess of actual costs—GSA cannot meet the Judiciary's facilities needs, and basic preventive maintenance services and building infrastructure are likely to deteriorate further.

The AO has been notified by William B. Jenkins, assistant regional administrator of GSA's Public Buildings Service in New York, that, "It may become necessary to reduce

and/or eliminate some services that you have become accustomed to. . . . Some of the reductions may include reducing the frequency of cleaning, washing windows, hours and levels of heating and cooling, and deferring improvements such as carpeting and painting." Jenkins indicated in his letter that building operating hours would be enforced and charges made for overtime services. This may affect when buildings are heated and cooled. Typically, systems are turned on two hours before occupants arrive,

but GSA now may consider those hours as part of overtime utilities and charge courts for extra service hours.

In addition, some services associated with space delivery, such as programming and design, layout services, alterations, and some occupancy services that normally are paid by GSA, might not be available because of the funding shortfall. This may mean that GSA's ability to prepare courtroom and chamber space for new judges could be limited. No rental rate reductions

COLA continued from page 1
increase; Court Security; a 21.7 percent increase; and the Administrative Office, a 4.3 percent increase. The Sentencing Commission will receive a 5.2 percent increase, and the Federal Judicial Center will be funded slightly below last year's level.

"Congress continues to recognize the Judiciary's needs, and this FY98 appropriation gives the Judiciary the funding necessary to allow the courts to provide the same level of services as in FY97," said AO Director Leonidas Ralph Mecham. "The FY98 budget will let us meet new workload requirements imposed by the increasing caseload in federal courts, and to support programs that will assure the improvement of services Judiciary-wide."

The appropriations bill also contains a provision establishing a commission to study the structure and alignment of the federal appeals system, with particular reference to the 9th Circuit. The commission's five members will be appointed by the Chief Justice. The commission's recommendations to the President and Congress are due within 12 months.

In the appropriations language for defender services, a provision mandates disclosure of the amounts

will be made despite reduced services.

Jenkins assured the AO that federal protective services would not be affected by budget cuts and that buildings would "continue to be operated to our high standards."

At Mecham's direction, AO staff will meet with the GSA administrators to discuss the curtailment of services. The AO has been working closely with court executives and their staffs to identify projects that may be affected by GSA's lack of funds.

paid to panel attorneys for services under the Criminal Justice Act. However, the court may determine the defendant's interests require a limited disclosure of any detailed information on payment vouchers. The court also provides reasonable notice of disclosure to the defendant's counsel prior to the approval of the payments to allow counsel to request redaction of information. The provision becomes effective 60 days from, and sunsets two years from enactment of the bill.

Congress again declined to increase panel attorneys' rates. However, a cap on the costs of capital representations was dropped from the bill. Conferees on the bill also modified the so-called Hyde amendment, agreeing to the awarding of reasonable attorney fees and other litigation costs for defense counsel in certain criminal cases where the defendant is found not guilty, providing the court finds the U.S. action "vexatious, frivolous, or in bad faith." Conferees also added legislation amending the Prison Litigation Reform Act of 1996, to allow state legislators to challenge over-crowding decrees requiring the release of prisoners; clarifying the standard under which these decrees end; and amending the act's automatic stay provisions.

Yet another provision amends U.S.C. 18 § 44(c) to require that each circuit, other than the Federal Circuit, shall have at least one circuit judge in regular active service appointed from the residents of each state in that circuit.

Finally, the appropriations bill indefinitely authorizes the Judiciary Information Technology Fund, which was due to sunset.

Because *The Third Branch* was going to press as Congress adjourned, the December newsletter will have more information on the Judiciary's FY98 budget and on the status of other legislation affecting the Judiciary.

The passage of the FY98 appropriations bill closes what has been over a year-long push by the Judiciary to secure a pay adjustment for federal judges. At its September 1997 meeting, the Judicial Conference passed a resolution endorsing a cost-of-living salary adjustment for all government leaders. The Conference also had voted unanimously in March 1997 to endorse recommendations on a catch-up pay adjustment, delinkage of judges' pay from Executive Schedule and congressional pay, and linkage of annual pay adjustments for judges to annual changes in the rates of pay of the General Schedule; and the repeal of Section 140 of P.L. 97-92. In the intervening months, Chief Justice William H. Rehnquist urged Congress to give judges the COLA and repeal Section 140, as did Judge Barefoot Sanders (N.D. Tex.) and other members of the Judicial Conference Committee on the Judicial Branch, Judge John Heyburn (W. D. KY) and members of the Budget Committee, numerous judges, AO Director Leonidas Ralph Mecham, and Administrative Office staff. Many organizations friendly to the Judiciary also endorsed and worked for a COLA for judges, including the Federal Bar Association and the three judges associations. The American Judicature Society also contributed to the effort.

In the end, Congress was willing to include only the affirmative COLA language required by Section 140, clearing the way for the COLA for judges. There appears to be strong opposition in Congress to the delinkage of salaries between judges and members of Congress on annual COLAs. Opposition even exists to the repeal of section 140 of P.L. 97-92, which is perceived by some in Congress as a step toward delinkage.

Testimony Focuses on Judicial Improvements, Judgeships, and Arbitration

In testimony last month before a House subcommittee, representatives of the Judicial Conference addressed a bill to improve various court operations, a bill that would require all courts to establish arbitration programs, and Article III judgeship needs.

Appearing before the House Judiciary Subcommittee on Courts and Intellectual Property were Judge Philip M. Pro (D. Nev.), chair of the Judicial Conference Committee on the Administration of the Magistrate Judges System; Chief Judge Julia Smith Gibbons (W.D. Tenn.), chair of the Committee on Judicial Resources; and Chief Judge D. Brock Hornby (D. Me.), chair of the Committee on Court Administration and Case Management. Other judicial officers testifying at the hearing were Magistrate Judge Tommy E. Miller (E.D. Va.), in his capacity as president of the Federal Magistrate Judges Association, and Chief Judge Elizabeth Kovachevich (M.D. Florida), who testified on the judicial resource needs of her district.

Representative Howard Coble (R-NC) opened the hearing, saying, "As chair of this subcommittee, I hear the complaints and concerns of legislators, litigants, citizens, and members of the bench that federal litigation is too slow, too complicated, and too expensive. The bills we will discuss today seek to tackle those problems." The subcommittee proceeded to consider the Federal Courts Improvement Act, the Alternative Dispute Resolution and Settlement Encouragement Act, and the need for additional federal district court judges.

Federal Courts Improvement Act of 1997

Coble introduced H.R. 2294, the Federal Courts Improvement Act, at the request of the Administrative Office. "This bill," said Coble, "is comprised of numerous proposals that the Judiciary believes will improve the federal judicial system. These propos-

als cover judicial financial administration; judicial process improvements; Judiciary personnel administration, benefits and protections; and Criminal Justice Act amendments. This hearing will no doubt provide valuable discussion on these proposals which will enable me, [with] the Ranking Member, and working with other



Judge Philip M. Pro (D. Nev.), chair of the Judicial Conference Committee on the Administration of the Magistrate Judges System (photo left) and Chief Judge D. Brock Hornby (D. Me.), chair of the Committee on Court Administration and Case Management.

interested members of the Subcommittee, to introduce a bill which will contain those proposals that we believe will be successful in improving the federal judicial system."

In his testimony, Pro identified specific provisions in H.R. 2294 that "would each contribute, in some measure, to the efficiency of the judicial branch of government by saving time, money, and resources." The provisions highlighted by Pro would extend contempt authority to magistrate judges, transfer an annual report on federal wiretaps from the AO to the Department of Justice, and enhance security for federal judges by establishing a firearms training program as a condition for allowing federal judges the option of carrying a handgun.

"Presently, the lack of adequate contempt authority by magistrate judges undermines both the magis-

trate judge's and the court's authority when confronted with misconduct or failure to obey court orders," Pro told the subcommittee. Under this provision, magistrate judges would have summary criminal contempt authority to punish any misbehavior by witnesses, parties, counsel, and others present at court proceedings.

The bill also would provide magistrate judges with additional criminal and civil contempt authority in civil consent cases under 28 U.S.C. § 636(c) and in misdemeanor cases under 18 U.S.C. § 3401.

H.R. 2294 also seeks enactment of a statute authorizing federal judges to carry firearms for purposes of personal security and to establish a firearms training program.

Miller in his testimony before the subcommittee presented the position of the Federal Magistrate Judges Association, which supports the Conference, on contempt authority for magistrate judges and on consent authority for magistrate judges in petty offenses and involving juvenile defendants. "Our organization," said Miller, "believes enactment . . . will substantially improve the ability of magistrate judges to perform their functions and to assist in the administration of justice."

The Department of Justice's senior counsel for ADR, Peter R. Steenland, who also testified at the hearing, expressed support for the proposal and thanked Judicial Conference Executive Committee chair Judge Wm. Terrell Hodges (M.D. Fla.) for helping to meet DOJ's concerns.

Alternative Dispute Resolution and Settlement Encouragement Act

Coble said that H.R. 2603, the Alternative Dispute Resolution and Settlement Encouragement Act, "will provide concrete steps to restore accountability, efficiency, and

fairness to our federal civil justice system." However, Hornby, in his testimony, expressed concern over the legislation, which would require district courts to establish an arbitration program. "The Judicial Conference believes this is unwise and—considering that the vast majority of districts already use ADR—unnecessary," Hornby told the subcommittee. The proposed bill would require courts specifically to set up an arbitration program, even though 80 of the 94 district courts already use some form of ADR. The Judicial Conference supports the use of ADR by district courts. Recommendation 39 of the *Long Range Plan for the Federal Courts* encourages district courts to "make available a variety of alternative dispute resolution techniques, procedures, and resources to assist in achieving a just, speedy, and inexpensive determination of civil litigation."

The proposed legislation also could encourage the use of mandatory arbitration, thereby requiring all litigants to go automatically through the extra step of arbitration, before having access to the traditional trial process. "This could add to the cost and delay of civil litigation rather than reducing it," Hornby said. "The Conference's view is that well run voluntary programs will attract participants and provide an effective form of ADR without demanding that all litigants participate regardless of their circumstances." The Conference, Hornby said, supports giving the courts the authority to use voluntary court-annexed arbitration as one form of ADR, but not the expansion of mandatory court-annexed arbitration programs.

Judicial Resources and Judgeships

The Subcommittee also heard testimony on the need for additional federal district judges, at the request, Coble said, of subcommittee members Charles T. Canady (R-FL) and Bill

McCollum (R-FL). "Nationwide, federal courts are backlogged with cases," Coble said. "Some would argue that a possible solution to the problem is to add more federal district court judges. We will hear testimony in regard to the situation in the Middle District of Florida, as well as



Chief Judge Julia Smith Gibbons (W.D.Tenn.), chair of the Committee on Judicial Resources, testified at the hearing on judgeship needs.

the general need for additional federal district court judges throughout the country."

As chair of the Conference Committee on Judicial Resources, Gibbons told the subcommittee that the Judicial Conference uses a formal, systematic method for evaluating judgeship needs in the courts of appeals and district courts. The Judiciary also has adopted a variety of approaches to maximize the use of judicial officer resources including the use of new, more conservative formulas to evaluate judgeship requests in the courts, requesting temporary rather than permanent judgeships, use of senior judges, intercircuit and intracircuit assignment of judges, use of magistrate judges, and use of alternative dispute resolution.


The Judicial Conference is constantly evaluating the need to control growth and the need to seek resources that are appropriate to the workload," said Gibbons. "In an effort to place

that policy in effect, the Conference has requested far fewer judgeships than the caseload increases would suggest are now required."

Nevertheless, Gibbons said, both the appellate and district courts are facing dramatic increases in their caseloads. Since fiscal year 1991, the last time Congress created additional judgeships, the number of cases filed in the courts of appeals has grown by 21 percent. Despite this increase, the Conference has requested only 17 additional appellate judgeships, a 10 percent increase in the number of judgeships for the courts of appeals. Gibbons said the change in the caseload of the district courts has been even more pronounced. Since 1991, the number of case filings has grown by 24 percent to over 300,000 cases. "When these cases are weighted for complexity, the increase is 27 percent," said Gibbons. "By way of comparison, the Judicial Conference has requested the addition of 36 judgeships in the district courts, an increase of less than six percent. In the 23 courts where the Conference has requested additional judgeships, the case filings are up over 30 percent and weighted filings in those courts have increased 33 percent just since 1991."

Kovachevich spoke in support of the Conference recommendation that the Middle District of Florida add four new judgeships, three permanent and one temporary. She sketched the demographics of the district where the growth rates are "unparalleled in the country."

"The Middle District of Florida has one of the heaviest caseloads in the country, consistently ranking among the top ten in a variety of workload indicators with approximately one-third more filings per judge than in other districts. . . . Since 1992, the filings per judgeship have been 35 percent higher in the Middle District than the national average," she said.

Kovachevich urged the subcommittee to support additional judgeships as recommended by the Conference. 

The Civil Justice Reform Act of 1990 Sunsets Next Month

After seven years and an enormous amount of time, energy, and creative thought from every district court—and over 1,700 attorneys and litigant representatives—most of the provisions of the Civil Justice Reform Act of 1990 (CJRA) will expire December 1, 1997. The Judicial Conference's final report to Congress, which was sent to all district and magistrate judges last May, describes the Judiciary's experience with the act's cost- and delay-reduction measures. It also provides a series of Conference recommendations aimed at continuing the efficient resolution of civil cases. In addition to reviewing these recommendations, courts also should make sure that any beneficial procedures they adopted pursuant to the CJRA are not affected. As the act's sunset approaches, some of the issues that courts should address are the following:

Continuation of the CJRA Advisory Groups

The act required each district court to establish a CJRA advisory group to examine the court's docket and prepare an expense- and delay-reduction plan. This resulted in a comprehensive review of the civil litigation process and established a unique partnership between the court and members of the bar. The Conference's final report notes that the advisory group process was one of the most beneficial aspects of the act and recommends that districts continue to use them.

Continuation of the Provisions of the Civil Justice Expense and Delay Reduction Plans

Courts should be aware that if their civil justice expense- and delay-reduction plans were implemented pursuant to the CJRA alone, rather than through a court order or local rule, their authority will sunset with the act. Therefore, these courts may consider adopting their plans pursuant to the authority of 28 U.S.C. § 2071(e), which allows for the immediate adoption of rules, and start the formal rule-making process promptly thereafter.

Continuation of Staffing Positions Funded Through the CJRA

Funding for CJRA staff positions also will end. To provide transition time

for these positions, the Conference agreed to continue funding them until March 1998 and directed its Judicial Resources Committee to consider a permanent funding mechanism for those positions involved in ongoing alternative dispute resolution programs.

Continuation of the CJRA Case Reporting Requirements

The CJRA required the Administrative Office to prepare semiannual public statistical reports regarding the status of motions and bench trials pending over six months and cases pending over three years. Due to the effectiveness this procedure has had in reducing case disposition delay, the Conference's CJRA report recommended that it be continued. Since then, legislation has been enacted requiring courts to continue these reporting requirements.

The AO has developed a new software program for tracking these case disposition statistics, which will ensure both an accurate portrayal of each court docket and consistent statistical reporting between the districts. It also will limit clerical errors and delays that occur with the manual reporting system still used by many districts. The Conference recommends that

courts install the new software and carefully review their existing data bases to reconcile any differences. All courts are required to begin using the new software program for the March 1998 statistical report. These new policy guidelines will be included in the *Guide to Judiciary Policies and Procedures*.

Role of the Chief Judge in Case Management

The Conference's CJRA report states that the "chief judge is the most visible and important institutional leader within the district court system." As part of its consideration of the role of the chief judge in case management, the Conference reviewed the powers already provided to district chief judges through the *Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases*, which was adopted by the Conference in 1971. That document provides specific powers to district chief judges to ensure the prompt disposition of cases, such as the ability to establish a screening system to identify and assess difficult cases and ensure their prompt disposition. It is the Conference's view that this document, although not widely known and rarely used, gives great assistance in the management of district court cases. Therefore, in September the Conference reaffirmed its 1971 adoption of its program, which will be sent to all courts in the near future.

These are some of the major issues courts should address as the sunset of the CJRA approaches. Most importantly, however, each district court should continue its efforts to evaluate and improve case management practices to ensure that the Judiciary's commitment to reducing unnecessary cost and delay in civil litigation continues.

NOVEMBER

14-15 Friday-Saturday
Workshop for Court of Federal Claims Judges and
Special Masters

DECEMBER

- 1-5 Monday-Friday**
Video Orientation for New District Judges
- 3-4 Wednesday-Thursday**
Committee on Judicial Resources
- 3-5 Wednesday-Friday**
Committee on Court Administration and Case Management
- 4-5 Thursday-Friday**
Committee on Administration of the Magistrate Judge System
- 7-10 Sunday-Wednesday**
Committee on Criminal Law
- 8-9 Monday-Tuesday**
Committee on Security and Facilities
- 8-9 Monday-Tuesday**
Committee on the Administrative Office

CHIEF DEPUTY CLERK, Eleventh Circuit

CLERK OF BANKRUPTCY COURT, Western District of Wisconsin

CHIEF PROBATION OFFICER, District of North Dakota

EQUAL OPPORTUNITY EMPLOYERS

Gallup Puts Judiciary at Top of Poll

In 1976 and 1997, over 900 adults were asked in a CNN/USA Today/Gallup Poll how much they trusted the executive, legislative, and judicial branches of government. And despite controversy over "judicial activism" and calls for impeachment of judges, the Judiciary was the branch most trusted by the American public. In fact, the trust level for the Judiciary today exceeds that measured for the Judiciary during the nation's bicentennial year, a period in which public trust levels might be expected to have been high.

In 1976, 63 percent of those polled said they had a great deal or fair amount of trust and confidence in the judicial branch. In 1997, this response had increased to 71 percent. The poll placed the judicial branch well ahead of the other branches of government in terms of public trust and confidence.

Trust or confidence in the executive branch increased slightly during the period between 1976 and 1997, according to the poll. In 1976, 58 per-cent of the people polled expressed a great deal or fair amount of trust and confidence in the executive branch. By 1997, this percentage had increased to 62.

In 1976, 61 percent of the people polled had a great deal or a fair amount of trust and confidence in the legislative branch, placing ahead of the executive branch in public opinion. But by 1997, only 54 percent expressed the same degree of trust and confidence.

Q

As you know, our federal government is made up of three branches:
• An executive branch, headed by the President; a judicial branch, headed by the U.S. Supreme Court; and a legislative branch, made up of the U.S. Senate and House of Representatives. Let me ask you how much trust and confidence you have at this time in. . . .

	Executive Branch		Judicial Branch		Legislative Branch	
	1976	1997	1976	1997	1976	1997
Great deal	13	13	16	19	9	6
Fair amount	45	49	47	52	52	48
Not very much	30	27	26	22	31	36
None at all	9	9	6	5	6	8
No opinion	4	2	4	2	4	2

The margin of sampling error in a sample of this size is plus or minus 4 percentage points. Numbers are rounded to nearest whole number.

Bankruptcy Commission Submits Recommendations

The National Bankruptcy Review Commission submitted its report to Congress last month with more than 170 recommendations for changes to existing bankruptcy law and procedure. The nine-member commission was created by the Bankruptcy Reform Act of 1994 to investigate and study issues relating to the Bankruptcy Code; solicit the views of parties involved with the operation of the bankruptcy system; and evaluate the advisability of proposals relating to these issues. The commission held 21 national and regional public meetings and hearings on the bankruptcy system between May 1996 and August 1997. Two federal judges, Judge Edith H. Jones (5th Cir.) and Bankruptcy Judge Robert E. Ginsberg (N.D. Ill.), served on the commission.

Following transmittal of the commission's report, Senator Charles E. Grassley (R-IA), chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, held a hearing to review the report and receive testimony from commission members. Grassley has introduced, with Senator Richard J. Durbin (D-IL), the Consumer Bankruptcy Reform Act, which encompasses several of the commission's recommendations. Grassley also has steered two bills on bankruptcy through the Judiciary Committee: S. 1024, which would make Chapter 12 permanent, and S. 1149, which would protect public school districts from lost revenues due to bankruptcy.

On November 14, 1997, the House Judiciary Subcommittee on Commercial and Economic Law held a

hearing on the commission's report and received testimony from the three invited commissioners, chairman Brady Williamson, Judge Edith H. Jones, and Babette A. Ceccotti. This hearing focused almost exclusively on consumer issues, with active questioning by subcommittee members.

Among the commission's proposals are the following:

■ For consumer bankruptcy, a uniform approach to exemptions for debtors that, coupled with audits, national filing records, and a limit on both repeat filings and the reaffirmation of unsecured debt, is designed to slow or stop the increase in consumer bankruptcies and enable debtors to repay more of

See **Bankruptcy** on page 9

JUDICIAL MILESTONES

Appointed: Christopher F. Droney, as U.S. District Judge, U.S. District Court for the District of Connecticut, September 22.

Appointed: Kevin N. Fox, as U.S. Magistrate Judge, U.S. District Court for the Southern District of New York, October 2.

Appointed: Katharine S. Hayden, as U.S. District Judge, U.S. District Court for the District of New Jersey, October 14.

Appointed: Henry H. Kennedy, Jr., as U.S. District Judge, U.S. District Court for the District of Columbia, October 20.

Appointed: Wesley Wilson Steen, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Texas, September 26.

Elevated: Judge Terrence William Boyle, to Chief Judge, U.S. District Court for the Eastern District of North Carolina, succeeding Chief Judge James C. Fox, October 8.

Elevated: Judge Frank Mays Hull, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Eleventh Circuit, October 3.

Senior Status: Judge Richard Mills, U.S. District Court for the Central District of Illinois, October 7.

Senior Status: Judge Wilkes C. Robinson, U.S. Court of Federal Claims, July 31.

Retired: Magistrate Judge Richard A. Powers, III, U.S. District Court for the Eastern District of Pennsylvania, September 30.

Retired: Bankruptcy Judge James E. Yacos, U.S. District Court for the District of New Hampshire, September 30.

Resigned: Magistrate Judge Elizabeth Todd Campbell, U.S. District Court for the Northern District of Alabama, October 2.

Deceased: Senior Judge T. Emmet Clarie, U.S. District Court for the District of Connecticut, September 24.

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Director's Awards Nominations Sought

Nominations for the 1998 Director's Awards for Administrative Excellence and Outstanding Leadership now are being accepted. Nomination forms will be sent to all payroll certifying officers for distribution to employees. Nominations must be received by the Administrative Office Human Resources Division by January 12, 1998.

The Director's Award for Administrative Excellence honors employees for outstanding achievements in improving the administration of the federal Judiciary. The Director's Award for Outstanding Leadership recognizes managerial employees who have made long-term contributions to increase managerial effectiveness and who have developed improvements in the administration of the federal Judiciary.

JUDICIAL BOXSCORE

As of November 1, 1997

Courts of Appeals

Vacancies	24
Nominees	12

District Courts

Vacancies	66
Nominees	37

Court of International Trade

Vacancies	2
Nominees	0

Courts with "Judicial Emergencies"

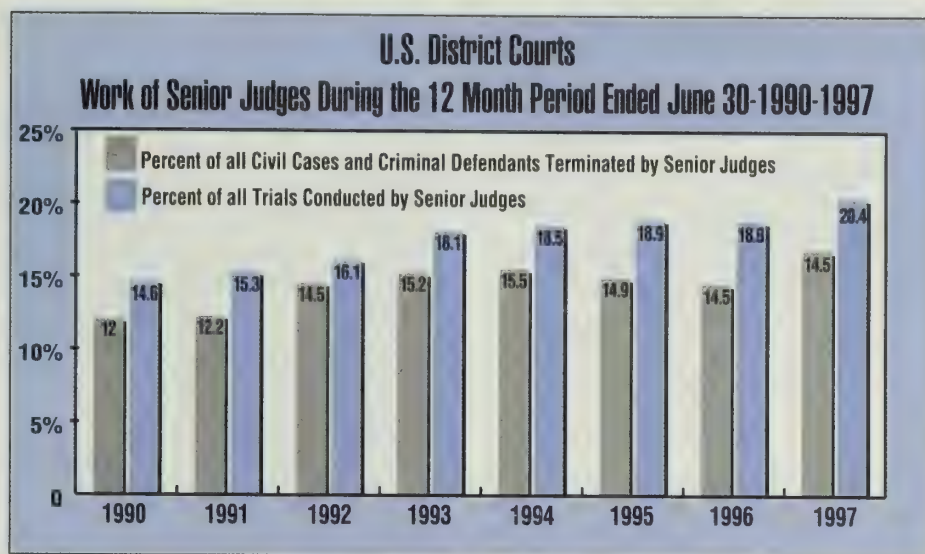
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Senior Judges Contribute in Years When Most Workers Seek Retirement

The Judiciary has a little-known tool in its efforts to provide timely justice. It is a workforce of more than 400 senior judges, all over the age of 65, who've already worked at least 10-15 years on the bench—many of whom still carry a substantial caseload. At an age when they could enjoy retirement, these judges handle 15 percent of the workload in the courts of appeals and 17 percent of the workload in the district courts.

In the courts of appeals, senior judges handled 11,699 of the 79,802 oral hearings and submissions on briefs in 1997. In 1992, they participated in 9,949 of the 70,491 hearings and submissions. In the district courts, 48,543 civil cases and criminal defendant terminations were handled by senior judges in 1997, or nearly 17 percent of the workload; this is up from 40,636 cases, or 14.5 percent in 1992. "With the current number of judicial vacancies and ever-increasing caseloads in federal courts, senior judges are the major reason most courts can continue to function," said Administrative Office Director Leonidas Ralph Mecham.

Of the 17,266 civil and criminal trials conducted in federal courts in



1997, senior judges handled 3,524, or 20.4 percent, up from the 16 percent of trials in 1992.

Past studies have shown that, with time, senior judges gravitate toward civil cases, eventually handling these cases almost exclusively. With civil filings per authorized judgeship at the highest total since 1988, courts depend upon the participation of senior judges. "The criminal caseload has become heavier, with longer and more complex trials that take more and more time of active judges, who have less time to dedicate to civil

matters," said Mecham. "Senior judges take on the civil caseload. Without them, costs and delays in civil proceedings undoubtedly would increase substantially."

Article III judges may take senior status when they fulfill specific age and service requirements. Under Article III of the Constitution, federal judges are not required to take senior status or retire at any particular age. Federal judges are eligible to retire when their age plus years in service equal 80, but judges cannot retire before the age of 65 unless they retire with a disability.

Bankruptcy continued from page 7

their debts especially to unsecured creditors.

■ For business bankruptcy, expedited procedures for small businesses; new proposals for the treatment of partnerships; new guidelines for transnational insolvency; clearer definitions and procedures for mass tort damages claims, a new venue standard, etc.

■ For family farm bankruptcy, the permanent establishment of Chapter

12 and, for municipal bankruptcy, changes seeking to improve the system in light of the experience of the Orange County Chapter 9 case.

■ For the entire bankruptcy system, the elimination of a mandatory appeal to the district courts or the bankruptcy appellate panels, national bankruptcy bar admission requirements, enhanced data collection and dissemination, Article III status for bankruptcy judges, etc.

It is anticipated that most recommendations involving

jurisdiction and/or administration issues will be addressed by the appropriate Judicial Conference committees. The Committee on the Administration of the Bankruptcy System is taking the lead in the initial review and suggested referrals, but it is anticipated that many of the various Conference committees will review and comment on these recommendations. The Conference's final report on these recommendations will reflect a consolidated Judiciary response.

Judicial Security is Top Issue for Committee

Judge Norman H. Stahl (1st Cir.) is chair of the Judicial Conference Committee on Security and Facilities. He was elevated to the Court of Appeals for the First Circuit in 1992 from a judgeship in the District of New Hampshire. While the committee oversees the security and facilities programs of the federal Judiciary, this interview highlights one facet: security.

Q: As its name indicates, the Judicial Conference Committee on Security and Facilities is active in addressing the Judiciary's space and courthouse needs. What role does the committee play in the Judiciary's security needs?

A: The U. S. Marshals Service, by statute, is responsible for the security of the federal courts. The General Services Administration (GSA), as the government's landlord, is responsible for general building security, including those that house court operations.

The Judiciary assists the U.S. Marshals Service in providing security related services to the courts through its funding of the Judiciary's Judicial Facility Security Program. The program provides for contract security personnel (court security officers) and for the purchase, installation, and maintenance of security systems and equipment at all facilities that house a court operation. At the beginning of each fiscal year, funds are transferred to the Marshals Service, which administers the day-to-day operations of the program in accordance with a Memorandum of Understanding between the Judiciary and the Marshals Service. In conjunction with the Marshals Service, the Committee is actively involved in preparing the annual court security appropriation request to Congress, in



Judge Norman H. Stahl

establishing program spending priorities, and the monitoring of the Marshals Service's management of the Court Security Program. The Committee has general oversight of the Marshals Service provision of security-related services to the Judiciary.

Among the issues currently before the Committee are the following: the need for 24-hour security at all court facilities; off-site security for judicial officers; expanded use of court security officers; the need to amend the calculations used for determining the number of court security officers needed at a facility; the development of a comprehensive firearms training program for judicial officers; and the feasibility of locating child-care centers in courthouses.

Q: In the aftermath of the bombing of the Alfred P. Murrah Federal Building there was a government-wide tightening of security. What steps has the Judiciary taken to make its courthouses and courtrooms more secure?

A: For some time, the Judiciary has recognized the need for an enhanced level of security at buildings housing court operations. The Judi-

ciary has aggressively sought the resources necessary to meet our court security requirements. In 1983, the Judiciary established the Judicial Facility Security Program. As noted previously, the program provides for on-site court security officers and security systems and equipment at all federal courthouses. This program has seen substantial growth over the last 14 years, commensurate with the increases in the Judiciary's space inventory. At its inception in 1983, the Judiciary's security program was budgeted at \$12 million and provided approximately 405 contract guards. The budget for this fiscal year is \$167 million, which supports, in part, over 3,000 court security officer positions.

Following the bombing in Oklahoma City, the Department of Justice was directed by Executive Order to evaluate the level of facility security provided at all federal buildings and to make recommendations for improvement where appropriate. The Department of Justice, in conducting its review, noted that the Judiciary was currently providing an appropriate level of facility security for its buildings. The need for additional security enhancements following the bombing was minimal. The majority of the security enhancements at court facilities have involved perimeter upgrades, such as exterior closed circuit TV systems, vehicle barriers, and perimeter alarm systems, all of which are the responsibility of the General Services Administration. One of the recommendations from the Department of Justice's review was that the Marshals Service be delegated the authority to determine the level of access control at all federal buildings housing a judicial officer. The Committee has worked closely with the relevant agencies in updating an existing 1987 Memorandum of Agreement on security to include incorporating this new delegation. ➤

Q: What is the status of the Court Security Officer (CSO) contracts?

A: The approximately 3,000 court security officer positions funded in this year's court security appropriation are guards under contract to the U.S. Marshals Service. These contracts are awarded on a circuit-by-circuit basis for a period of one year with up to an additional four option years. A security vendor conceivably could have the security guard contract for a particular circuit for a total of five years. There are currently three security vendors providing all the contract guard services nationwide.

Over the past several months the Marshals Service has been re-competing CSO contracts in the 1st, 2nd, 4th, 5th, 7th, and DC circuits. The remaining six circuit contracts will be re-competed next year. In many locations, in order to meet Marshals Service requirements to obtain highly qualified and skilled contract employees, the contractors are paying hourly wages higher than the Department of Labor determined wage rate. (The Department of Labor sets the appropriate minimum CSO hourly wage rate for a particular geographic location.) Under the current award process, and in order to stay competitive, some contractors are proposing to pay the CSOs the minimum wage determination, which could result in a reduction of \$2-\$3 per hour in CSO wages.

Although the government cannot direct that these companies set the CSO wage at a level that is higher than the Department of Labor minimum, the vendors have been notified that, nonetheless, security services must be performed without disruption.

Q: The Federal Courts Improvement Bill includes a provision on judges carrying firearms and on firearms training. What does this provision provide, and why is it necessary?

A: The proposed Federal Courts Improvement Act of 1997, transmitted to Congress on behalf of the Judicial Conference and subsequently introduced in the House of Representatives as H.R. 2294, includes a provision that would authorize active, senior, and certain retired judges to carry concealed or other firearms in accordance with Judicial Conference regulations, and would require the Justice Department to cooperate with the Conference in providing firearms training to judges.

It has long been recognized by security experts that judicial officers are most vulnerable to a security incident when they are away from the secure courthouse. The Judicial Conference endorsed a firearms provision that, in appropriate cases, should assist in mitigating that risk. It is just one of several off-site security measures being addressed by our Committee. The firearms legislation will enable those judicial officers desiring to carry a firearm as an off-site security measure to fulfill their judicial responsibilities without having to obtain a permit from each local jurisdiction.

Q: Do you have any personal views you could share with us about security issues as a result of your involvement as chair of the Security and Facilities Committee?

A: Each time we meet, it becomes clearer and clearer that judges are increasingly concerned for their safety and the safety of court staffs and the public. The threats seem more frequent—and the courthouse might be a target for protest and confrontation. In my home state of New Hampshire, there was a recent incident involving a member of the state judiciary, and as many people know, Judge Robert Vance, the first chairman of our Committee, was murdered by an explosive device mailed to his home. This is why the Committee's agenda has been focused

on the importance of security issues, particularly on facilitating items that require action by GSA and the Marshals Service, such as a contractor clearance process and controlling courthouse access points.

Q: Is there any advice judges might find useful as they begin to plan for security in newly constructed courthouses?

A: It is most important that the local district's court security committee play an active role in the design process because security is often overlooked in that stage of planning for new facilities. Although we have asked GSA to integrate new security-related construction criteria into new buildings, we are having a difficult time convincing them that the criteria, which GSA itself developed, need to be integrated into the design of all new buildings. The issue is coming down to a question of funding and expertise within GSA. This is why the local court security committee needs to become involved. The court security committee is supposed to have representatives from the Marshals Service and GSA as permanent members. Raising security issues to the appropriate levels is very important. When this is done, it is more likely that important issues will be promptly and successfully resolved.

In addition, our Security and Facilities Committee has a representative member from each circuit. Judges might find it helpful to talk with the committee representatives from their respective circuits. If committee members do not have the answer to a question, they might know who to reach to get an answer. Finally, AO staff are available to address issues that need resolution.

JUDICIAL CONFERENCE OF THE UNITED STATES, September 23, 1997



Seated: (L to R) Chief Judge Juan R. Torruella (1st Cir.); Chief Judge Ralph K. Winter, Jr. (2nd Cir.); Chief Judge Dolores K. Sloviter (3rd Cir.); Chief Judge J. Harvie Wilkinson III (4th Cir.); Chief Justice William H. Rehnquist; Chief Judge Henry A. Politz (5th Cir.); Chief Judge Boyce F. Martin, Jr. (6th Cir.); Chief Judge Richard A. Posner (7th Cir.); Chief Judge Richard S. Arnold (8th Cir.).

Standing, Second Row: Chief Judge Joseph L. Tauro (D. Mass.); Judge W. Earl Britt (E. D. N.C.); Chief Judge Lloyd D. George (D. Nev.); Chief Judge Glenn L. Archer, Jr. (Fed. Cir.); Chief Judge Procter R. Hug, Jr. (9th Cir.); Chief Judge Joseph W. Hatchett (11th Cir.); Chief Judge Harry T. Edwards (D.C. Cir.); Chief Judge Sephanie K. Seymour (10th Cir.); Judge Donald E. O'Brien (N.D. Iowa); Chief Judge Clarence A. Brimmer (D. Wyo.).

Standing, Third Row: Judge William H. Barbour, Jr. (S.D. Miss.); Chief Judge Peter C. Dorsey (D. Conn.); Judge Thomas A. Wiseman, Jr. (M.D. Tenn.); Chief Judge Edward N. Cahn (E. D. Pa.); Chief Judge Michael M. Mihm (C.D. Ill.); Judge Wm. Terrell Hodges (M.D. Fla.); Chief Judge Norma H. Johnson (D. D.C.); Chief Judge Gregory W. Carman (Int'l Trade); Leonidas Ralph Mecham, AO Director.

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Newsletter
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Breaking the Freeze on COLAs: An Interview with Judge Barefoot Sanders

As chair of the Judicial Conference Committee on the Judicial Branch for the last three years, Judge Barefoot Sanders (N.D. Tex.) has led the Judiciary's effort to obtain a cost-of-living adjustment for federal judges. He formulated strategies, organized judges meetings, called upon members of Congress, and talked with the media by phone. Sanders' term as chair has ended with a success—passage of the first COLA for judges since January 1993. A member of the committee for the past seven years, Judge David Hansen (8th Cir.) has taken over as chair of the Judicial Branch Committee. In an interview earlier this month with the staff of *The Third Branch* Sanders offered his perspective on what it took to obtain the salary adjustment that has eluded judges for the past four years.



Judge Barefoot Sanders (N.D. Tex.)

Q: Can you account for the apparent change in climate that resulted in Congress providing its members, judges, and Executive Schedule officials their first cost of living (COLA) salary adjustment in four years?

A: A substantial reason for the change was the support of the Chief Justice for the legislation and the work of the Judicial Branch Committee, along with numerous individual judges, and associations—the Federal Judges Association.

See *Interview* on page 10

105th Congress' First Session Productive for Judiciary

While the first session of the 105th Congress brought federal judges their first cost-of-living adjustment in four years, several other significant legislative measures also received consideration. Both houses conducted oversight hearings on judicial "activism" and judicial resources, and legislative hearings were held on the Federal Courts Improvement Act of 1997, the Alternative Dispute Resolution and Settlement Encouragement Act, the controversial Judicial Reform Act of 1997, and the Judicial Conference proposal to create 18 additional bankruptcy judgeships. Congress passed bills to extend certain temporary district court judgeships created by P.L. 101-650 and to create a commission to study the courts of appeals.

Judicial Operations

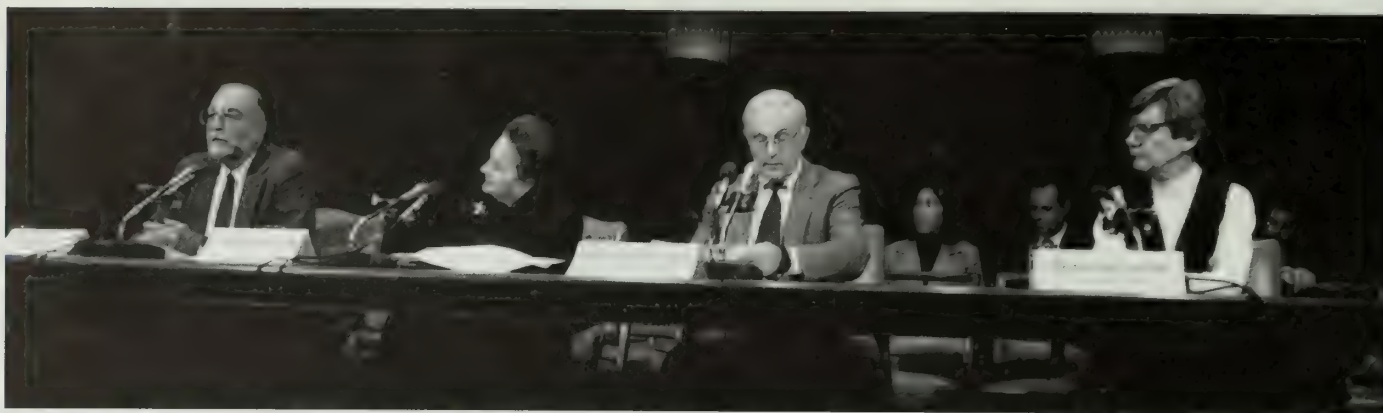
Courthouse Construction

The fiscal year 1998 budget submitted by the President requested no General Services Administration funding for new courthouse construction or repairs and alterations because of a nearly \$700 million shortfall in GSA's Federal Buildings Fund. As a result, the FY98 Treasury

See *105th Congress* on page 4

INSIDE

Fifth Hearing Held on Judgeship Allocations	pg. 2
Judicial Resources Allocated for FY98	pg. 3
ABA, AJS Defend Judicial Independence	pg. 12



The Senate Judiciary Subcommittee on Administrative Oversight and the Courts examined judgeship allocations in the 1st, 3rd and Federal Circuits last month. Testifying before the subcommittee were (photo left to right) Chief Judge Juan Torruella (1st Cir.), Chief Judge Dolores Sloviter (3rd Cir.), Chief Judge Glenn Archer (Fed. Cir.), and Judge Jane Roth (3rd Cir.).

Fifth Hearing on Judgeship Allocations Closes 1997

Congress ended the first session of the 105th Congress in early November and went home, but Senator Charles E. Grassley (R-IA), chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, stayed to hold a fifth hearing on judgeship allocations in the courts of appeals. Because of the cost of circuit court judgeships, Grassley said, "we must take special care in determining how many judgeships are needed by each circuit."

Last month Grassley reviewed judgeship needs in the 1st, 3rd, and Federal Circuits. Chief Judge Juan Torruella (1st Cir.), Chief Judge Dolores Sloviter (3rd Cir.), Chief Judge Glenn Archer (Fed. Cir.), and Judge Jane Roth (3rd Cir.) testified. Grassley has examined over half the circuits' judgeship allocations, with the 6th, 7th, 9th, and 10th Circuits remaining.

The 1st Circuit has six authorized judgeships, with one vacancy. S. 678, the Federal Judgeship Act of 1997, would add one new judgeship to the circuit. Torruella told the subcommittee that case filings in the circuit have increased 22 percent since 1986, when the complement of active judges last was increased to six. The pending caseload jumped 55 percent in that time. Torruella also described the circuit's "difficult caseload,"

composed of large *pro se*, prisoner petitions, and complex private civil cases. "[E]ven with a full court of six active judges and four senior judges, as well as an increased number of district and visiting judges," said Torruella, "we are unable to stem the unrelenting tide of appeals. . . . The statistics justify the filling of our vacancy based both on the use of the Judicial Conference formula for measuring court of appeals judgeship needs, and on a more sophisticated analysis of our court's workload."

The 3rd Circuit, which has 14 authorized judgeships, has not requested additional judgeships. However, Sloviter told the subcommittee, the court is unanimous in support of the request that the single vacancy on the court be filled. Sloviter told the subcommittee that in the past year, when there were two vacancies, the 3rd Circuit had to reduce the number of weekly sessions for disposition of counseled merits cases. "Our court operates under the principle that a merits disposition requires judicial, rather than staff, determination," Sloviter said. "We believe Article III judges should perform Article III judges' work, and deciding cases is the core of Article III judges' work." The court also emphasizes prompt

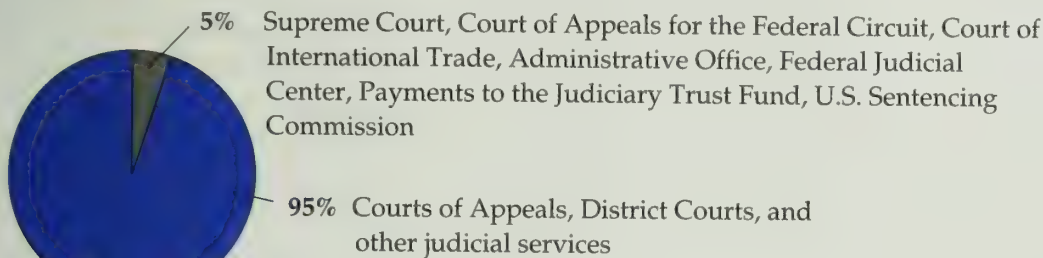
disposition of cases. The median disposition time—the time from notice of appeal to final order—of all cases, as of the end of fiscal year 1996, was eight months, as compared to the national average of 10.4 months. This is despite a 36 percent increase in filings in the 3rd Circuit in the past 10 years.

The Federal Circuit is not seeking additional judgeships, but a vacancy will occur on the court in December, when Archer takes senior status. Archer urged filling the vacancy. "With a full complement of 12 judges," Archer said, "the Federal Circuit is able to meet its historic obligation to provide consistent and predictable, nationwide precedents in its assigned subject areas. . . . The work of the Federal Circuit impacts heavily on the federal government and on business and industry in this country. It is important, therefore, to keep this court adequately staffed with judges." The Federal Circuit hears oral arguments 12 months a year and each active judge is expected to have a full argument calendar in at least 10 of those months. During argument week each active judge will normally sit on 12-16 argued cases and have 10-15 cases submitted on the briefs. Each judge also serves on a motions panel about three months a year. ➤

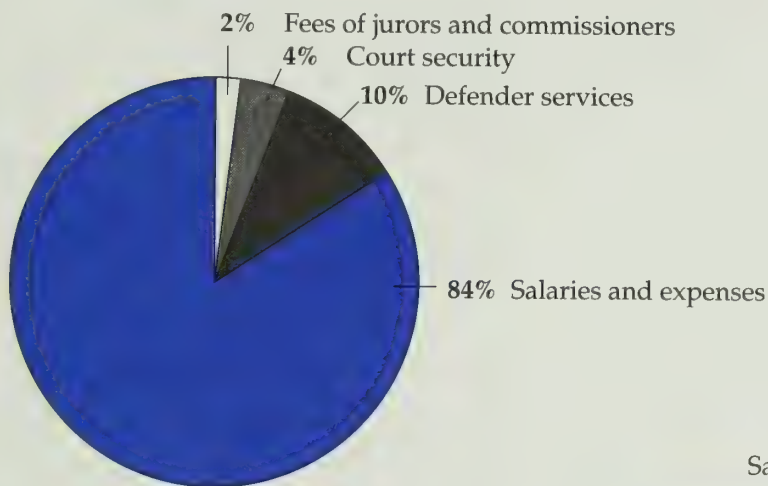
Allocating Judicial Resources in Fiscal Year 1998

On November 26, 1997, the President signed the Judiciary's fiscal year 1998 appropriations bill into law as P.L. 105-119. The appropriation gives the Judiciary the funding necessary, not only for needed services, but also to support programs that will improve services throughout the courts. "Judge John Heyburn and the rest of the Judicial Conference's Budget Committee should be commended not only

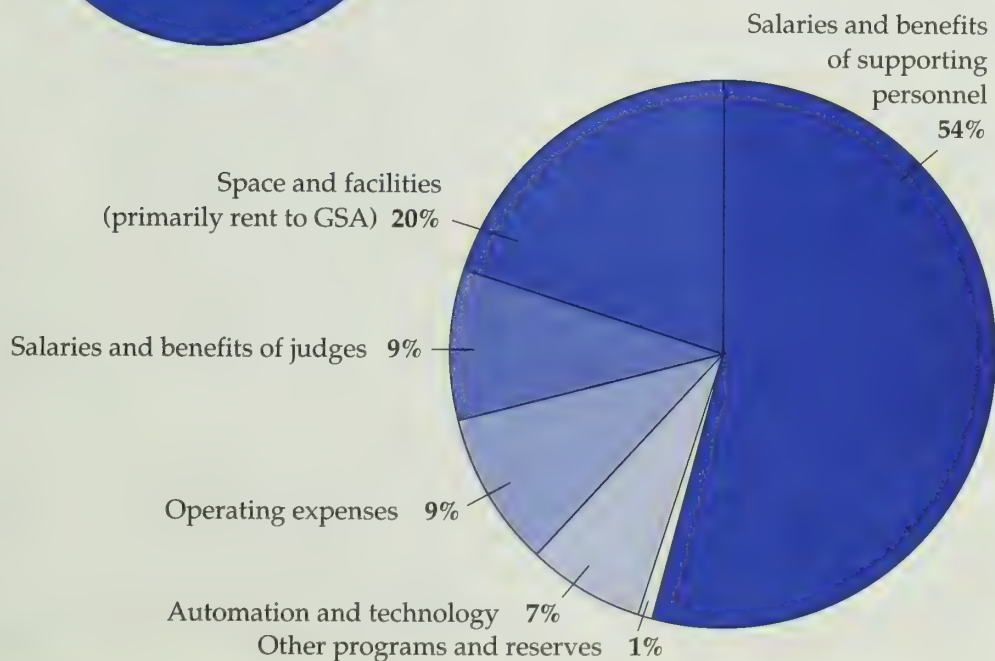
for the excellent budget they prepared, but also their success in working with Congress," said Administrative Office Director Leonidas Ralph Mecham, who also recognized the "outstanding efforts" of AO staff on behalf of the courts. The Judiciary's resources for fiscal year 1998 have been distributed to eight major areas, with the bulk supporting the courts.



The appellate and district court resources are further broken down into support for specific programs:



The money allocated to salaries and expenses is further divided:



105th Congress continued from page 1

Appropriations Act did not contain funding for courthouse construction. However, for several years buildings have been funded through direct appropriations, not from the Federal Buildings Fund.

H.R. 2294, The Federal Courts Improvement Act

Judge Phillip M. Pro (D. Nev.) testified for the Judicial Conference before the House Judiciary Subcommittee on Courts and Intellectual Property on H.R. 2294, the Federal Courts Improvement Act. The bill contains 30 separate provisions that amend the law on a wide range of issues relating to the Judiciary, including federal court jurisdiction, the authority of judicial officers, and personnel and administrative programs. The House committee is expected to take action on the bill early in the second session.

H.R. 2603, Alternative Dispute Resolution and Settlement Encouragement Act

The House Judiciary Subcommittee on Courts and Intellectual Property held a hearing on H.R. 2603, Alternative Dispute Resolution and Settlement Encouragement Act, a bill that would require each judicial district to institute a court-annexed arbitration program. At this hearing, Chief Judge D. Brock Hornby (D. Me.), chair of the Conference Committee on Court Administration and Case Management, testified that the Conference supports alternative dispute resolution but believes each district should be free to employ the type of alternative dispute resolution program that will be most effective in that district.

H.R. 1252, Judicial Reform Act of 1997

The House Judiciary Subcommittee on Courts and Intellectual

Property held a hearing on H.R. 1252, Judicial Reform Act of 1997, and reported the bill with amendments to the full Judiciary Committee for consideration in the second session of Congress. H.R. 1252 is a multipart bill, which includes proposals to provide that a three-judge court hear certain applications for injunctions, to allow peremptory challenges of judges in civil cases, and to transfer for resolution complaints of judicial misconduct to a circuit other than that where the complained-against judge sits. Yet another provision gives the presiding judge authority to allow media coverage of appellate court proceedings. Chief Judge Henry A. Politz (5th Cir.) and Judge Ann Claire Williams (N.D. Ill.) testified on behalf of the Judicial Conference in opposition to parts of H.R. 1252. In an effort to make the bill more acceptable to the Judiciary, provisions were added that would delink judicial salaries from those of members of Congress and repeal section 140 of P.L. 97-92.

H.R. 1544, Federal Agency Compliance Act

The House Judiciary Committee reported out H.R. 1544, the Federal Agency Compliance Act, although the bill did not reach the House floor for consideration during the first session. The bill would prevent federal agencies from pursuing policies of unjustified "non-acquiescence" of precedents established by federal judicial circuits. At a House hearing, Judge Stephen H. Anderson (10th Cir.) testified that the bill conforms to a recommendation of the Judicial Conference in the *Long Range Plan for the Federal Courts*, published in December 1995.

Ninth Circuit Split

As part of the Commerce, Justice, State and the Judiciary Appropriations Act, Congress created a Commission on Structural Alternatives to Federal Courts of Appeals to study

the alignment of circuit courts of appeals. The Chief Justice will appoint five commission members who will then report findings and recommendations regarding the current circuit court alignment to Congress within one year. Earlier in the session, the Senate had voted to split the Ninth Circuit Court of Appeals into two circuits but deferred that action pending the report of the study commission.

S. 598, Disclosure of Court-Appointed Attorneys Fees

Senator Pete V. Domenici (R-NM) introduced S. 598, which amends 18 U.S.C. § 3006A(d) to make information about the amounts paid to court-appointed lawyers under this section available to the public upon the court's approval of the payment. The text of S. 598 was added as an amendment to the Judiciary's FY98 appropriations bill, which was enacted into law.

Judicial "Activism"

Several congressional hearings were held that addressed judicial "activism" during the first session of the 105th Congress. The House Judiciary Subcommittee on Courts and Intellectual Property, chaired by Representative Howard Coble (R-NC), held an oversight hearing on judicial misconduct and discipline in May. The Senate Judiciary Subcommittee on the Constitution, Federalism, and Property Rights, chaired by Senator John Ashcroft (R-MO), held hearings on judicial "activism" in June and July. Generally, the hearings were divided between individuals testifying on judicial decisions with which they disagreed, and witnesses explaining the importance of judicial independence.

Judicial Resources

P. L. 105-53

Legislation passed the House and Senate to extend certain temporary

judgeships created in 1990 by P.L. 101-650. The enacted legislation also provided for the permanent reauthorization of funding for 20 court pilot arbitration programs established by P.L. 100-702, and it transferred a judgeship from the Eastern District of Louisiana to the Middle District of Louisiana. President Clinton signed the bill into law October 6, 1997.

S. 678, The Federal Judgeship Act of 1997

The Judicial Conference transmitted a request to Congress for the creation of 12 permanent and 5 temporary courts of appeals judgeships and 24 permanent and 12 temporary district court judgeships early in 1997. S. 678, a bill to create the judgeships, was introduced in the Senate by Senator Patrick J. Leahy (D-VT). Judge Julia S. Gibbons (W. D. Tenn.), chair of the Conference Committee on Judicial Resources, testified before the House Judiciary Subcommittee on Courts and Intellectual Property on the reasons underlying the judgeship request. However, no bill has been introduced in the House and no action has been taken on S. 678.

H.R. 1596, The Bankruptcy Judgeship Act of 1997

The Judicial Conference asked Congress to create 18 bankruptcy judgeships. In the House, the request was introduced as H.R. 1596, which passed. The Senate Judiciary Subcommittee on Administrative Oversight and the Courts held a hearing on the House-passed bill but took no further action. Judge David R. Thompson (9th Cir.), chair of the Conference Committee on the Administration of the Bankruptcy System, testified on the measure at both the House and Senate hearings. Senator Charles E. Grassley (R-IA) has requested information on judges' travel from the 14 courts requesting bankruptcy judgeships.

H.R. 875, S. 394, Judicial Compensation

H.R. 875, a bill to adjust, and provide a procedure for the future adjustment of, the salaries of federal judges was introduced in the House by Representatives Henry J. Hyde (R-IL) and John Conyers (D-MI). The bill collected 89 co-sponsors, but did not move out of the House Judiciary Subcommittee on Courts and Intellectual Property. Provisions from H.R. 875 to repeal section 140 of P.L. 97-92 and delink judges' salaries from those of members of Congress were incorporated into H.R. 1252, the Judicial Reform Act. S. 394, a similar pay adjustment bill introduced by Senator Orrin G. Hatch (R-UT) attracted 26 co-sponsors, but did not move out of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts. The joint House-Senate conferees on the Treasury, Postal Service and General Government Appropriations Act of 1998 rejected an amendment offered by Hatch, which would have delinked judges' pay from that of members of Congress and also repealed section 140.

Criminal Justice

H.J. Res. 71, a proposed constitutional amendment on victims' rights

S. J. Res. 6, a proposed constitutional amendment on victims' rights

H.R. 1322, The Victims' Rights Constitutional Amendment Implementation Act of 1997

S. 1081, Victim of Crime Assistance Act

The House and Senate Judiciary Committees held hearings on proposed victims' rights constitutional amendments. Chief Judge George P. Kazen (S.D. Tex.) and Judge Wm. Terrell Hodges (M.D. Fla.) testified before the House Judiciary committee on the Judicial Conference concern over the impact of these proposals on the federal criminal justice system. The Conference has taken no formal position on the

proposed amendments, but strongly urged that Congress consider a statutory approach, such as S. 1081, the Victim of Crime Assistance Act, as opposed to a constitutional amendment.

H.R. 3, the Juvenile Crime Control Act of 1997


H.R. 810, Anti-Gang and Youth Violence Act of 1997

S. 362, Anti-Gang and Youth Violence Act of 1997

S. 10, Violent and Repeat Juvenile Offender Act of 1997

In the first session of the 105th Congress, the House passed legislation that would increase the prosecution of juveniles in federal courts. The Senate Judiciary Committee reported a similar bill to the full Senate for consideration. Chief Judge George P. Kazen (S.D. Tex.) wrote to Judiciary Committee Chair Henry J. Hyde (R-IL) to express the continuing concern of the Conference with legislation that is intended to shift traditional state criminal prosecutions into federal courts. At its September 1997 meeting, the Judicial Conference reiterated its "long-standing position that federal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts," and affirmed that this policy is particularly applicable to the prosecution of juveniles.

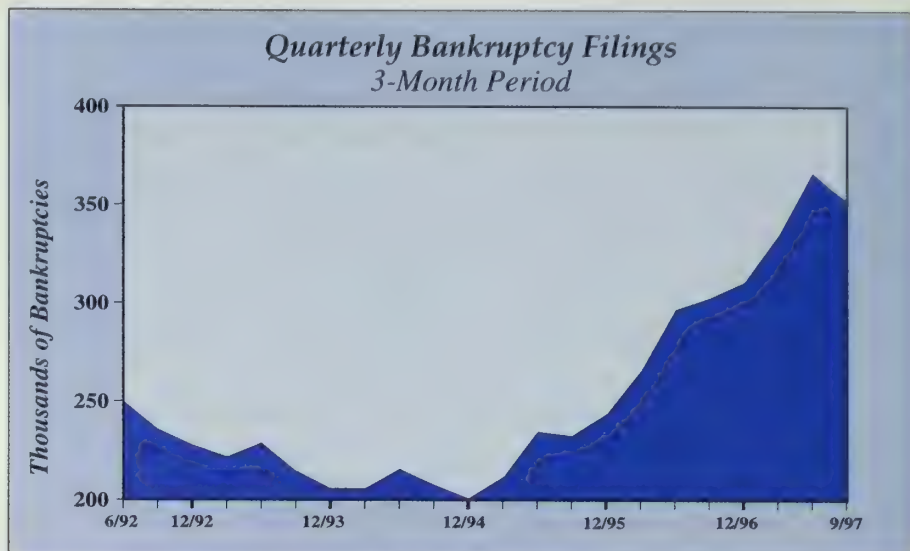
P.L. 105-6, The Victim Allocation Clarification Act of 1997

The Victim Allocation Clarification Act of 1997 was signed into law by the President in March. P.L. 105-6 prohibits a U.S. district court from ordering any victim of an offense excluded from the trial of a defendant accused of that offense because the victim may, during the sentencing hearing, make a statement or present any information as to the effect of the offense on the victim and the victim's family. 

Bankruptcy Filings Still Climbing

In the 12-month period ending September 30, 1997, bankruptcy filings in federal courts nationwide again hit an all-time high for any 12-month period in the Judiciary's history, according to the data compiled by the Administrative Office. Bankruptcy filings totaled 1,367,364, a 23 percent increase over the same fiscal-year period in 1996. Bankruptcy filings first topped the one million mark in the 12-month period ending June 30, 1996, and the number of filings has continued to climb since then.

While filings for the 12-month period increased, filings for the final quarter of the Judiciary's fiscal year dipped slightly when compared to the previous quarter. However, this is still the second highest level ever reported for quarterly bankruptcy filings. The number of bankruptcy cases filed during the fourth quarter (July 1, 1997-September 30, 1997) totaled 353,515; third quarter (April 1, 1997-June 30, 1997) filings totaled 367,168; second quarter (January 1, 1997-March 31, 1997) filings were 335,073; and filings in the first



quarter of fiscal year 1997 (October 1-December 31, 1996) totaled 311,131.

Of the total number of bankruptcy filings for the 12-month period ending September 30, 1997, there were 958,045 Chapter 7 filings, an increase of 25.8 percent over the 761,652 filings in the same period in 1996. The next largest group were Chapter 13 filings at 397,097, an 18 percent increase over the 336,615 filings in the same period in 1996.

Chapter 11 filings dropped to 11,221 in the 12-month period ended September 30, 1997, down from 12,554 in the same period in 1996. Chapter 12 filings also fell slightly, from 1,096 in 1996 to 966 in 1997. Business filings totaled 54,252, up 1.4 percent from the September 30, 1996, total of 53,520. Non-business filings totaled 1,313,112, up 24.1 percent from the 1,058,444 filed in the same period for 1996.

Ceiling on Outside Income Rises

As a result of the cost-of-living adjustment judges will receive in 1998, the ceiling on outside earned income will rise correspondingly. Now, judges and covered judicial employees are limited to outside earnings of \$20,040. This will increase to \$20,505 in January. The ceiling on outside earned income applies to many forms of outside employment, including teaching, but does not apply to royalties. The ceiling limits judges to 15 percent of an Executive Schedule Level II salary, which will increase to \$136,700 in January. This is the same salary district judges will earn.

Judicial Officer Pay Rates

(As of January 1, 1998)

Chief Justice	\$175,400
Associate Justices	\$167,900
Circuit Judges	\$145,000
Judges, District Court, Court of International Trade, Court of Federal Claims	\$136,700
Bankruptcy Judges and Magistrate Judges (full-time)	\$125,764

DECEMBER

- 1-5 Monday-Friday**
Video Orientation for New District Judges
- 3-4 Wednesday-Thursday**
Committee on Judicial Resources
- 3-5 Wednesday-Friday**
Committee on Court Administration and Case Management
- 4-5 Thursday-Friday**
Committee on Administration of the Magistrate Judge System
- 7-10 Sunday-Wednesday**
Committee on Criminal Law
- 8-9 Monday-Tuesday**
Committee on Security and Facilities
- 8-9 Monday-Tuesday**
Committee on the Administrative Office

JANUARY

- 7-8 Wednesday-Thursday**
Committee on Federal-State Jurisdiction
- 8-9 Thursday-Friday**
Committee on Rules of Practice and Procedure
- 8-9 Thursday-Friday**
Committee on Administration of the Bankruptcy Judges System
- 11-12 Sunday-Monday**
Committee on the Budget
- 14-15 Wednesday-Thursday**
Committee on Automation and Technology
- 15-17 Thursday-Saturday**
Committee on Codes of Conduct
- 19-20 Monday-Tuesday**
Committee on Financial Disclosure
- 20-21 Tuesday-Wednesday**
Committee on International Judicial Relations
- 27-29 Tuesday-Thursday**
Workshop for Circuit and District Judges of the Ninth Circuit

CIRCUIT EXECUTIVE, D.C. Circuit

The U.S. Court of Appeals for the District of Columbia Circuit is seeking qualified applicants for the position of Circuit Executive, the chief non-judicial officer. Under the direction of the Chief Judge and serving the circuit judicial council, the Circuit Executive has responsibility for space and facilities, including oversight of the construction of the Courthouse Annex; automation; budget; alternative dispute resolution programs; personnel; and special projects and events. Requirements: Minimum of eight years of management experience, preferably in the court system, and a bachelor's degree. Law degree and automation experience are desired. Salary: \$123,100. Send resume to Chief Judge Harry T. Edwards, 5818 E. Barrett Prettyman U.S. Courthouse, Washington, DC 20001. Closing date: **December 31, 1997.**

CHIEF PROBATION OFFICER, District of North Dakota

The United States District Court for the District of North Dakota is seeking a qualified individual for the position of Chief Probation Officer effective May 1, 1998. The duty station is Fargo. A minimum of a masters degree from an accredited college or university with specialization in one or more of the social sciences appropriate to the position to be filled is required. The salary range is \$63,169-\$113,254. A full vacancy announcement is available by calling (701) 250-4295. Interested persons should submit a letter of application, resume, and names, addresses, and phone numbers of three (each) personal and professional references to Edward Klecker, Clerk of Court, P.O. Box 1193, Bismark, ND 58501. Application deadline is 5:00 p.m. **January 30, 1998.**

BANKRUPTCY JUDGE, Tenth Circuit

The U.S. Court of Appeals for the Tenth Circuit seeks applications from highly qualified candidates for a 14-year appointment as a bankruptcy judge for the District of New Mexico at Albuquerque. The position will be available May 4, 1998. Annual salary: \$125,764. For further information, contact Robert L. Hoecker, Circuit Executive, U.S. Court of Appeals for the Tenth Circuit, 1823 Stout Street, Denver, CO 80257, or call (303)844-2073. Applications must be received by **February 13, 1998.**

CHIEF MANAGEMENT ADVISOR, District Court for the District of Columbia

Special assistant to serve as chief management advisor to the Chief Judge of the U.S. District Court for the District of Columbia. Responsibilities include coordinating administrative operations for the Chief Judge and serving as the court's EEO coordination, public information officer, and liaison to court offices and government agencies. Minimum of six years of administrative or managerial experience is required, preferably in the federal or state court systems. Strong management, analytical, and interpersonal skills are essential. Excellent communications skills, both verbal and written, required. Salary: JSP 14-15 (\$64,555-\$98,714), depending on qualifications. Send SF-171, or resume, and salary history with a writing sample to Valencia Pulley, Human Resources Manager, U.S. District Court for the District of Columbia, 333 Constitution Ave., N.W., Washington, DC 20001.

ASSISTANT CIRCUIT EXECUTIVE FOR AUTOMATION AND TECHNOLOGY, Tenth Circuit

The Circuit Executive's Office of the Tenth Circuit seeks a responsible, resourceful, and highly motivated individual to manage a growing staff of 11 automation specialists. The position is located in the Circuit Executive's office in Denver, Colorado, with responsibilities covering a six-state area. Candidates should possess at least three years' automation management experience, and a comprehensive knowledge of UNIX and PC network operating systems. Excellent organizational, communication, and interpersonal skills essential. A degree in computer science or a related field, advanced training in business or organizational management, and/or court experience is desired. The starting salary for the position is at least \$78,662 depending on salary history, education and experience. Send letter of application, resume, and salary history by **January 30, 1998**, to Circuit Executive, Tenth Circuit Court, 1823 Stout Street, Denver, CO 80257. Full position description available by calling Lori Strode at (303)844-3157.

EQUAL OPPORTUNITY EMPLOYERS

Computers Generate Models for Courtrooms

It is the first tour of the new courtroom. Look around. Take a walk through. Is there anything you'd like to change? Maybe the distance from witness stand to defendant's table could be increased. And, make a note for the architect to change the jury box height, to improve the jurors' field of vision. It's too dark in the well of the courtroom—add some lights. And it's a little crowded, too. Let's give the court reporter more room, and while we're at it, make the attorneys' tables wider to accommodate computers. Expensive changes in an already built courtroom? Not if the courtroom only exists on a computer screen, where changes now save money later.

Computer modeling is familiar to most people from computer games and movies, where they have generated everything from dinosaurs to a myst-shrouded island. In fact, computer modeling has become so sophisticated it may be hard to tell real-world from virtual reality. This is an advantage architects have recognized and exploited. "It's difficult for most people to visualize a one-dimensional floor plan in three dimensions," said Gate Lew, Administrative Office senior architect. "Computer modeling lets clients literally walk through the plan. They can experience the entire design, see how space is allotted to foyers or hallways, along with the proposed materials, colors, lighting, and even how furniture will fit."

The computer model isn't inexpensive, but when properly used it can lead to savings. A typical 10-minute video presentation incorporating a computer generated walk-through of a plan may cost \$50,000; a 3-dimensional view of a floor plan may cost between \$5,000 and \$25,000. The cost pales in comparison to making changes to facilities already under construction. For example, in one courthouse currently under construction, a court discovered that it needed to raise 17 judges' benches by one step

because the seated position of the judges turned out to be too low in relation to the rest of the courtroom. The construction contractor wanted \$1,000,000 to make the change. That's when most clients realize that what they thought they saw on a plan wasn't quite what they had in mind and ask, "Why didn't we see this during design?"

Computer models help eliminate that problem. In fact, computer models have proven so effective that the General Services Administration, the agency responsible for building federal courthouses, makes computer

rendering of plans a part of its design contracts. The models are most useful early in the concept and design development stage.

They can't, however, completely substitute for the full-size replica, albeit in rough plywood, that is built during the design stage. "Even though the full-size mock-ups are bare bones, with no doors, or lights, they do give accurate dimensions and sight lines, said Lew. "Computer models are close, and they're better than an artist's rendering, but when we get to actual construction there's nothing like the real thing."



Computer modeling shows the view jurors will have of the witness stand and judge's bench.



Modeling can show illumination levels in the courtroom, with both natural and artificial lighting, and sightlines from the bench of the courtroom.

JUDICIAL MILESTONES

Appointed: Richard Conway Casey, as U.S. District Judge, U.S. District Court for the Southern District of New York, November 10.

Appointed: James S. Gwin, as U.S. District Judge, U.S. District Court for the Northern District of Ohio, November 10.

Appointed: Anthony W. Ishii, as U.S. District Judge, U.S. District Court for the Eastern District of California, October 31.

Appointed: Algenon Marbley, as U.S. District Judge, U.S. District Court for the Southern District of Ohio, November 10.

Elevated: Judge Paul J. Barbadoro, to Chief Judge, U.S. District Court for the District of New Hampshire, succeeding Chief Judge Joseph DiClerico Jr., November 1.

Elevated: Judge Edward B. Davis, to Chief Judge, U.S. District Court for the Southern District of Florida, succeeding Chief Judge Norman C. Roettger, Jr., June 5.

Elevated: Judge Claude M. Hilton, to Chief Judge, U.S. District Court for the Eastern District of Virginia, succeeding James C. Cacheris, December 3.

Elevated: Judge Marilyn H. Patel, to Chief Judge, U.S. District Court for the Northern District of California, succeeding Chief Judge Thelton E. Henderson, November 15.

Senior Status: Judge R. Kenton Musgrave, U.S. Court of International Trade, November 14.

Deceased: Senior Judge Cecil F. Poole, U.S. Court of Appeals for the Ninth Circuit, November 12.

Deceased: Senior Judge Edward Dean Price, U.S. District Court for the Eastern District of California, November 3.

Deceased: Senior Judge J. Smith Henley, U.S. Court of Appeals for the Eighth Circuit, October 18.

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Devitt Award Nominations Open

Nominations are being accepted for the 16th annual Edward J. Devitt Distinguished Service to Justice Award. The award, named in honor of Judge Edward J. Devitt (D. Minn.), recognizes the dedicated public service of members of the federal judiciary. The award is administered by the American Judicature Society. All federal judges appointed under Article III of the Constitution are eligible for nomination.

Judges who have been honored with the award in recent years include Judge James R. Browning (9th Cir.), Judge Hubert L. Will (N.D. Ill.), Judge Joseph F. Weis Jr. (3rd Cir.), Judge Jack B. Weinstein (E.D. N.Y.), Judge

Milton Pollack (S.D. N.Y.), Judge John C. Godbold (11th Cir.) and Judge Collins J. Seitz (3rd Cir.).

The 1997 award selection committee is composed of Justice Clarence Thomas (S.C.), Judge Phyllis A. Kravitch (11th Cir.), and Judge Ralph G. Thompson (W.D. Okla.)

Entries should be in writing and set forth the nominee's accomplishments and professional activities that have contributed to the cause of justice. Nominations should be submitted by January 15, 1998, to Devitt Distinguished Service to Justice Award, 180 North Michigan Avenue, Suite 600, Chicago, Illinois 60601-7401.

JUDICIAL BOXSCORE

As of December 1, 1997

Courts of Appeals

Vacancies	22
Nominees	13

District Courts

Vacancies	56
Nominees	28

Court of International Trade

Vacancies	3
Nominees	0

Courts with

"Judicial Emergencies"	26
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Presidential Design Award Recognizes Renovation Success

The Byron White U.S. Courthouse in Denver, Colorado, has received a Presidential Award for Design Excellence, in recognition of the preservation of this early 20th century courthouse, which combines "a deep respect for the past with the thoughtful integration of new spaces for new uses."

Built in the early 1900s in a neoclassical style as the Federal Courthouse/Post Office, the building was nearly derelict by the 1980s. Much of the original architectural detail was destroyed or removed in decades of alterations by a succession of tenants. However, at the urging of the 10th Circuit Judges' Restoration Committee, the General Services Administration acquired the building in 1988 and restoration was begun. The subsequent restoration was so faithful to original drawings and historical photos that the courthouse received the 1994 Modernization Award from *Buildings Magazine*.

The juried Presidential Design Awards were established in 1983 by President Ronald Reagan to encourage and recognize the design successes of federal agencies and to

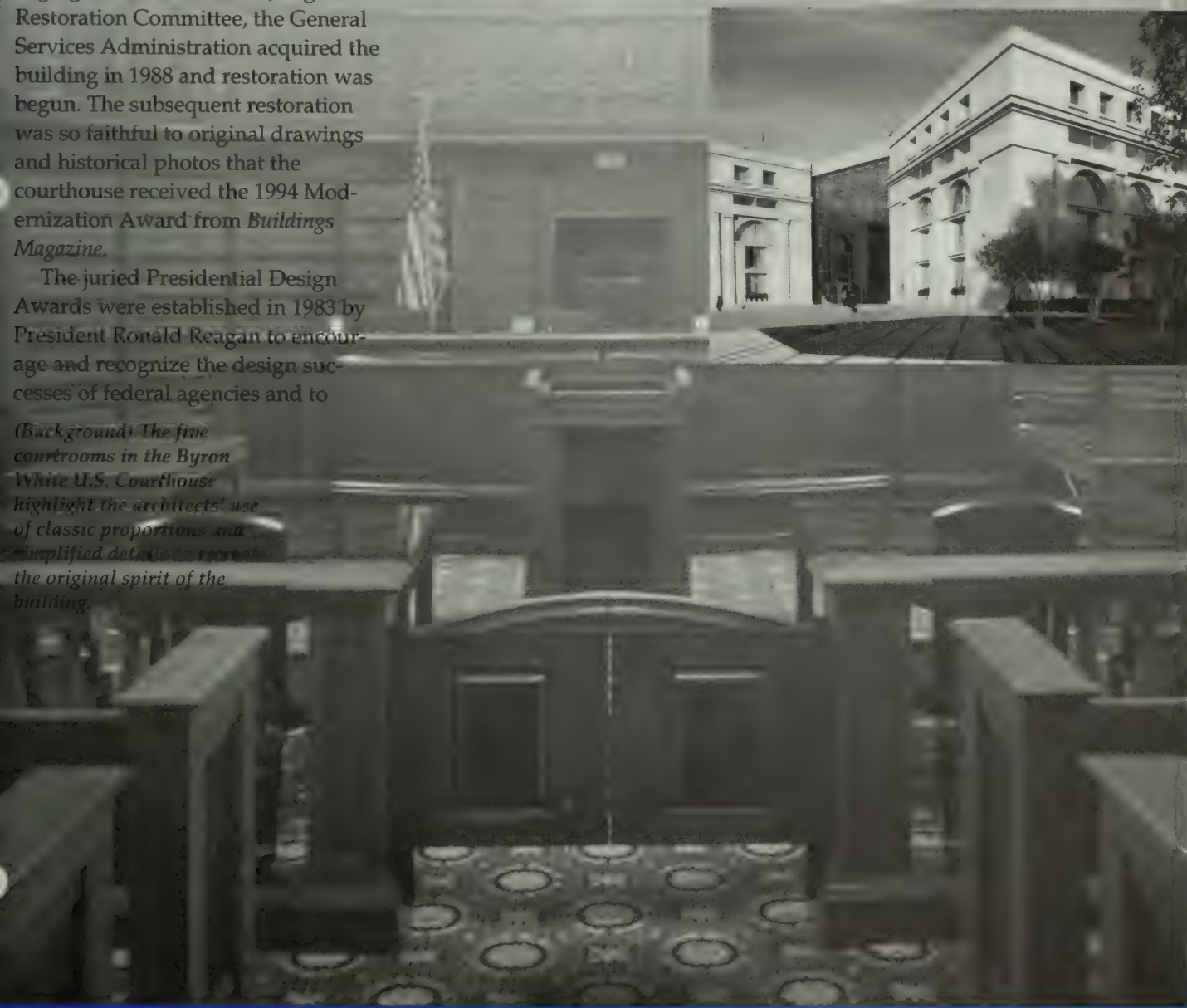
honor those individuals who have made outstanding contributions to federal design. The awards are administered by the National Endowment for the Arts and are presented every four years. The program includes two levels of awards, the Federal Design Achievement Awards, and the Presidential Awards for Design Excellence. The latter are presented for design of the highest quality in accordance with international standards.

The Thurgood Marshall Federal Judiciary Building in Washington, D.C., which was completed four months ahead of schedule and 10

percent under budget, received a Federal Design Achievement Award. The award recognizes the use of "a contemporary vocabulary of volumes and openings that respectfully recalls the cadence, rhythms and structure of the [Union] station without becoming a pastiche of historic elements."

Nationwide, 75 projects were selected to receive Federal Design Achievement Awards, and of these, nine received Presidential Awards for Design Excellence.

(Below) The Thurgood Marshall Federal Judiciary Building in Washington, D.C.



(Background) The fine courtrooms in the Byron White U.S. Courthouse highlight the architects' use of classic proportions and simplified details to restore the original spirit of the building.

Breaking the Freeze on COLAs: An Interview with Judge Barefoot Sanders

(continued from page 1)

tion, the Bankruptcy and Magistrate Judges Associations, the Federal Bar and American Bar Associations. I think, also, that our emphasis on the bipartisan nature of our effort helped change the climate.

Q: Does Congress' action suggest to you that the Ethics Reform Act's annual COLA mechanism will again be allowed to work?

A: There has been considerable discussion along these lines. I was quite encouraged by Speaker Gingrich's statement to the effect that annual COLAs ought to be the rule, as provided for in the Ethics Reform Act, without a lot of controversy. I believe that there are a number of members of Congress, senior members particularly, who feel this way. This is not a guarantee for the future but it is a hopeful sign. Of course, 1998 is an election year. If Congress allows a COLA for members, judges, and senior executives in 1998 (for FY 1999) as it should, that will be a very good portent for the future.

Q: What will happen if judges are again denied annual COLAs?

A: I think we'll just have to see. I don't like to assume bad news. If we're denied a COLA next year, we'll have to review the situation then. That will be up to the Judicial Branch Committee and my successor as chair, Judge David Hansen (8th Cir.), who is very wise in the ways of the Hill.

Q: The President's salary has not been adjusted since 1969. Does this present a problem for future judges' pay increases?

A: I don't think it is a problem for COLAs for the time being. But

the President's salary acts as a ceiling on any substantial increases in congressional and judicial salaries. For instance, the Chief Justice's salary certainly is not going to exceed the President's, and neither is the Speaker's nor the Vice President's and so on. There is a problem in that the failure to adjust the President's salary compresses the salaries of others in government. I think the President's salary ought to be substantially increased. It has been nearly 30 years since that was last done. If we doubled the President's salary, that probably would not take care of the cost-of-living increase since 1969, the year of the last increase.

When we compare the salaries of the President, members of Congress, and judges with the income of attorneys in the private sector and with other professionals, it is obvious that public service is not sufficiently recognized, at least in monetary terms.

Q: Your committee made at least two recommendations to the Judicial Conference on judges' compensation in the course of the year. Can you tell us about the committee's actions and the resulting Conference policy?

A: Initially, we recommended to the Conference that the Judiciary seek a cost-of-living increase in the amount of 9.6 percent, which would make up for the cost-of-living increases denied in the last four years. We also recommended that the Conference endorse repeal of section 140 of P.L. 97-92, which is an outmoded mechanism requiring specific congressional approval of a COLA for judges, in addition to the normal appropriation process. We further recommended that the Conference approve legislation

delinking judicial salaries from those of members of Congress, placing us instead in what's called the General Schedule for federal employees. The Conference endorsed all these recommendations.

As the year wore on it became increasingly clear that we were not going to obtain delinkage or the 9.6 percent catch-up. So in September 1997, we recommended to the Conference that it go on record as supporting a cost-of-living increase not for only the Judiciary, but also for members of Congress and for senior executives. We did that because we were encountering considerable feeling on the Hill that judges were interested only in themselves. And while judges salaries were our only responsibility, and we weren't trying to meddle in anyone else's business, we did want it understood that we favored cost-of-living increases across the board for all of those who'd been denied COLAs since 1993.

Q: The 1989 Ethics Reform Act called for the creation of a Citizens' Commission on Public Service and Compensation to replace what was known as the Quadrennial Salary Commission. What happened to the Citizen's Commission?

A: The Quadrennial Salary Commission was the backdrop for the enactment of the Ethics Reform Act. That act created a Citizens' Commission on Public Service and Compensation. The Citizens' Commission has not functioned. Many of the appointments to it have not been made. The appropriations for the commission have lagged. In fact, I'm not sure there are any appropriations for the commission to function. It is not a workable situation. The commission needs to be replaced. The Judicial Branch Committee did not try to examine what should replace it. I have not polled the committee members, but I think they believe that there should be something with a considerable amount of prestige, some

group that could speak with authority, and say that a pay increase in a specific amount is something these folks—that is, Congress and judges and senior executives—deserve.

That would not completely solve the problem, of course. Sooner or later the question of a pay increase will always come to Congress. But the more prestigious the commission, the more it is separated from the government, and more independent the people making the recommendation, the more weight the recommendation will carry with the public and the Congress.

Keep in mind that a pay increase is a separate matter from the annual COLA.

Q: During the 1st session of the 105th Congress, legislation was introduced (H.R. 875 and S. 394) to amend the current mechanism for adjusting judges' pay and to provide a catch-up pay adjustment. What was the result of this legislation?

A: Those bills were duplicates. They included those matters approved by our committee and endorsed by the Conference. As you know we didn't get what the Conference endorsed. We got a 2.3 percent COLA, just like members of Congress and senior executives. It is important that the annual COLA become a habit and not an occasional thing.

A major purpose of the bills was to garner bipartisan support for a pay adjustment. The idea was that bipartisan support, particularly from members of the Judiciary Committees in both the House and the Senate, would demonstrate to other members of Congress that there was a significant push for the legislation. H.R. 875 was sponsored by Representative Henry J. Hyde (R-IL) and co-sponsored by Representative John Conyers (D-MI), the chair and ranking minority member, respectively, of the House Judiciary Committee, and nearly 100 other House members.

S.394 was sponsored by Senator Orrin G. Hatch (R-UT), and co-sponsored by Senator Patrick J. Leahy (D-VT), chair and ranking minority member, respectively, of the Senate Judiciary Committee, and by over 25 senators. This broad support generated a change in the climate and helped to fix Congress' attention on the need for a COLA, not just for judges but across the board.

A major problem was that delinkage and repeal of section 140 are not widely understood. Those are subjects that must be pursued another time.

Q: Can you give us an overview of how your committee was working to secure the pay adjustment while Congress was considering this legislation?

A: The committee worked through all the constituent groups that I mentioned. Their work and assistance was really essential. With these groups, the judges on our committee, and the help of other members of the federal Judiciary throughout the country, we went to work obtaining sponsors and co-sponsors of those bills. That, in turn, generated the interest in a COLA.

Q: In the end, judges received a 2.3 percent cost-of-living adjustment. Does this meet your expectations, and what are your expectations for fiscal year 1999?

A: The 2.3 percent represents a modest achievement. We wanted more. We hoped we would get more. The significance of the 2.3 percent COLA, I believe, is that we broke the freeze on COLAs. Denying COLAs was becoming a matter of routine for Congress; there is some prospect now that granting COLAs will become routine.

As for our expectations for next year, that is difficult to read. Judge Hansen and the committee will be

dealing with that. As I have said, Judge Hansen is wise in the ways of the Hill and has very seasoned judgment.

Q: What is your sense of the reaction of the public and the media to Congress' decision to authorize a COLA for top government officials?


A: There's not been any significant adverse reaction. I base that on what I have observed and on what I have heard from judges throughout the country. There was some immediate media reaction, more favorable than unfavorable.

But the COLA is now old and cold news. After all, we are in a society where many many people are accustomed to cost-of-living increases. I believe that the amount of public opposition to the COLA was exaggerated.

Q: What are your reflections on your tenure on the Judicial Branch Committee?

A: It has been a very busy and enjoyable time. The members of the committee are outstanding. We've had major support from the Administrative Office and the staff there, particularly from Director Leonidas Ralph Mecham. Of course, the most important help on the COLA came from the Chief Justice. He outlined the necessity for a pay adjustment in early January of this year and worked on the legislation all through the year. He communicated with the leadership of the House and Senate and other members. His support elevated the importance of the COLA legislation.

I do want to mention that the Judicial Branch Committee deals with many other subjects in addition to COLA legislation. All committee members share the work on those projects.

Serving on the committee has been a great experience. 


ABA, AJS Advocate Judicial Independence

Two national organizations, the American Judicature Society (AJS) and the American Bar Association (ABA), are coming to the aid of what they see as an increasingly embattled Judiciary.

The AJS recently held the first meeting of its Center for Judicial Independence Task Force. Members discussed political attacks on judges. "The issue of judicial independence is at the heart of our democracy," AJS immediate past president Robert M. Kaufman told the task force. "It is at the core of our constitutional protections on the one hand, and at the core of public confidence in the objective decision-making of our courts on the other." The task force called for a national, citizen-driven effort to educate Americans about the importance of an independent Judiciary. The 22-member task force includes former U.S. Senator Howell T. Heflin, who also served as a chief justice of the Alabama Supreme Court, and former Representative Robert W. Kastenmeier, who chaired

the National Commission on Judicial Discipline and Removal. According to a recent AJS survey of 165 midwestern judges, 73 percent said there had been widespread attacks on the Judiciary in recent years in their states or jurisdictions, while 87 percent thought they were under increasing pressure to be directly accountable to public opinion. Task force member Benjamin Civiletti, U.S. Attorney General under President Carter, warned that, "Without independent judges, decisions that guaranteed our most cherished rights never could have been made."

Meanwhile, the ABA has formed a Special Committee on Judicial Independence that will study issues associated with attacks on judges. According to the committee's chair, William S. Sessions, a former U.S. district court judge and CIA and FBI director, "There is a substantial need for engaging the public and the legal profession to bring about a better understanding of what judges and courts do generally, and specifically

about the rule of law and the role that judges play." The committee will work for non-political selection of judges, including promotion of the ABA's preference for merit selection of judges. The committee also hopes to raise public awareness of the importance of judicial independence and will act as a clearinghouse for information in the area. Sessions said the committee plans a multifaceted approach toward public education, which will include talking to television and print media, and preparing educational materials for students in grade school through law school to clarify the importance of judicial independence. The committee also will examine the manner in which judicial independence is guaranteed, such as compensation and benefits, courthouse conditions, and security and staff assistance. The 11-member committee includes Judge Norma L. Shapiro (E.D. Pa.), and former White House counsel and U.S. circuit judge Abner Mikva. 

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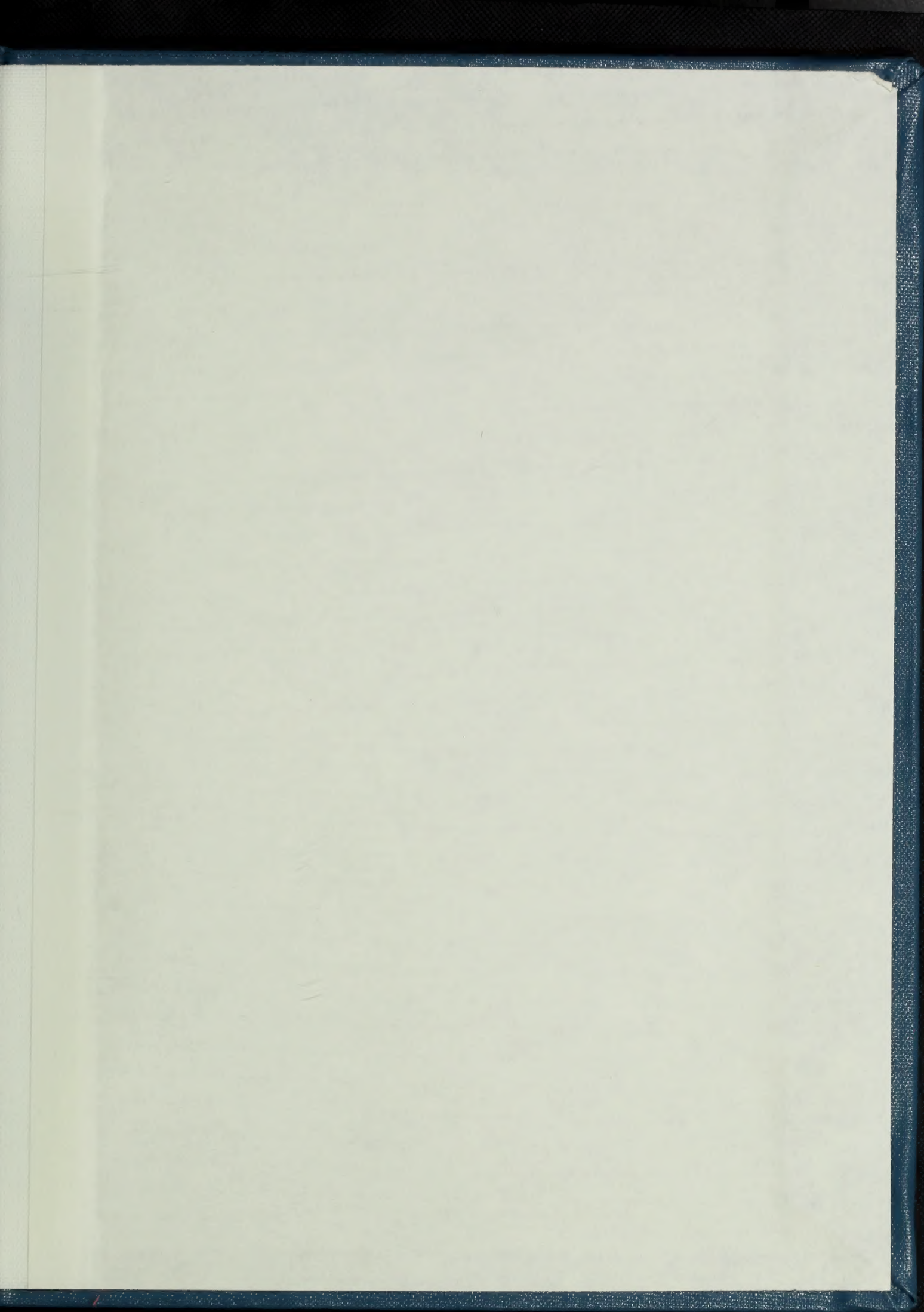
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